

SELECTION OF OPERATOR FOR OPERATION & MAINTENANCE OF CONTAINER FREIGHT STATION
(CFS) OF CONWARE AT NHAVA SHEVA, MAHARASHTRA



December 2021

Volume II: Draft O&M Agreement

This Page is intentionally left blank

Contents

PART I - PRELIMINARY.....	9
ARTICLE 1. DEFINITIONS AND INTERPRETATION.....	14
1.1 Definitions	14
1.2 Interpretation	22
1.3 Measurements and Arithmetic Conventions	24
1.4 Priority of agreements, Articles and schedules.....	24
PART II - THE OPERATION & MAINTENANCE	27
ARTICLE 2. SCOPE OF THE PROJECT	29
2.1 Scope of the Project	29
ARTICLE 3. GRANT OF OPERATION AND MAINTENANCE RIGHT.....	30
3.1 The Operation & Maintenance	30
3.2 Agreement Period	31
ARTICLE 4. DELETED	33
ARTICLE 5. OBLIGATIONS OF THE OPERATOR.....	34
5.1 Obligations of the Operator	34
5.2 Obligations relating to Project Agreements.....	37
5.3 Obligations relating to Change in Ownership.....	37
5.4 Obligations relating to Management of the SPV	37
5.5 Obligations relating to employment of foreign nationals	38
5.6 Obligations relating to employment of trained personnel	38
5.7 Obligations relating to Taxes for the services rendered to Authority.....	38
5.8 Obligations relating to information	38
5.9 Sole purpose of the Operator	39
ARTICLE 6. OBLIGATIONS OF THE AUTHORITY	40
6.1 Obligations of the Authority	40
ARTICLE 7. REPRESENTATIONS AND WARRANTIES	41
7.1 Representations and warranties of the Operator	41
7.2 Representations and warranties of the Authority.....	43
7.3 Disclosure	43
ARTICLE 8. DISCLAIMER	45
8.1 Disclaimer	45
ARTICLE 9. PERFORMANCE SECURITY	46

9.1	Performance Security	46
9.2	Validity of Performance Security.....	46
9.3	Appropriation of Performance Security.....	46
9.4	Release of Performance Security	47
9.5	References to Performance Security.....	47
9.6	Additional Performance Security	47
ARTICLE 10. HANDING OVER OF THE SITE.....		49
10.1	The Site.....	49
10.2	Access and Site Handover.....	49
10.3	Assessment of Site and structures	50
10.4	Site to be free from Encumbrances.....	50
10.5	Protection of Site from Encroachments	50
10.6	Access to the Authority and the Independent Consultant.....	51
ARTICLE 11. UTILITIES, ASSOCIATED ROADS AND TREES		52
11.1	Existing utilities and roads	52
11.2	New utilities and roads.....	52
ARTICLE 12. OPERATION AND MAINTENANCE.....		53
12.1	O &M obligations of the Operator	53
12.2	Maintenance Requirements	53
12.3	Damages for breach of maintenance obligations.....	53
12.4	Modifications to the Project	54
12.5	DELETED	54
12.6	Quarterly Tariff Statement.....	54
ARTICLE 13. SAFETY REQUIREMENTS.....		55
13.1	Safety Requirements	55
ARTICLE 14. DELETED		56
ARTICLE 15. INDEPENDENT CONSULTANT		57
15.1	Appointment of the Independent Consultant.....	57
15.2	Duties of Independent Consultant	57
15.3	Authorised signatories.....	58
15.4	Review and Termination of the Independent Consultant.....	59
PART III FINANCIAL COVENANTS.....		61
ARTICLE 16. CONSIDERATION BY THE OPERATOR.....		63

16.1 Upfront Fee..... 63

16.2 Minimum Guaranteed Annual Fee (MGAF) 63

16.3 Delay in payment of Consideration 65

16.4 Set-off..... 65

ARTICLE 17. DELETED 66

ARTICLE 18. ESCROW ACCOUNT 67

18.1 Escrow Account..... 67

18.2 Deposits into Escrow Account..... 67

18.3 Withdrawals during Agreement Period 67

18.4 Withdrawals upon Completion/Option to Exit/Termination..... 68

ARTICLE 19. INSURANCE 69

19.1 Insurance during Agreement Period 69

19.2 Insurance Cover 69

19.3 Notices to the Authority 69

19.4 Evidence of Insurance Cover..... 70

19.5 Remedy for failure to insure 70

19.6 Waiver of subrogation 70

19.7 Operator’s waiver..... 70

19.8 Application of insurance proceeds..... 70

19.9 Compliance with conditions of insurance policies 71

ARTICLE 20. ACCOUNTS AND AUDIT..... 72

20.1 Audited accounts 72

20.2 Certification of claims by Statutory Auditors 72

20.3 Appointment of Statutory Auditor 72

ARTICLE 21. DELETED 73

PART IV FORCE MAJEURE AND COMPLETION/ OPTION TO EXIT/ TERMINATION 75

ARTICLE 22. FORCE MAJEURE 77

22.1 Force Majeure..... 77

22.2 Non-Political Event 77

22.3 Indirect Political Event..... 77

22.4 Political Event..... 78

22.5 Duty to report Force Majeure Event 78

22.6 Effect of Force Majeure Event on the O&M Right..... 79

22.7	Allocation of costs arising out of Force Majeure.....	80
22.8	Termination Notice for Force Majeure Event	81
22.9	DELETED	81
22.10	Dispute resolution.....	81
22.11	Excuse from performance of obligations.....	81
ARTICLE 23.	DELETED	82
ARTICLE 24.	DELETED	83
ARTICLE 25.	TERMINATION	84
25.1	Termination for Operator Default.....	84
25.2	Termination for Authority Default.....	86
25.3	Termination Payment.....	86
25.4	Other rights and obligations of the Authority	89
ARTICLE 26.	DIVESTMENT OF RIGHTS AND INTEREST	91
26.1	Divestment Requirements	91
26.2	Inspection and cure.....	92
26.3	Transfer of Project.....	92
26.4	Vesting Certificate	93
26.5	Divestment costs etc.	93
26.6	Survival of Rights.....	93
ARTICLE 27.	DEFECTS LIABILITY AFTER COMPLETION/ EXIT/TERMINATION.....	94
27.1	Liability for defects after Completion/Option to Exit/Termination	94
27.2	Retention of Gross Revenue	94
PART V OTHER PROVISIONS	95
ARTICLE 28.	ASSIGNMENT AND CHARGES.....	97
28.1	Restrictions on assignment and charges	97
28.2	Permitted assignment and charges.....	97
28.3	Substitution Agreement	97
28.4	Assignment by the Authority	97
ARTICLE 29.	CHANGE IN LAW	98
29.1	Deleted.....	98
29.2	No claim in the event of recovery from users.....	98
29.3	No claim in the event of change in tax regulations and developmental control regulations....	98
29.4	Restriction on cash compensation	98

ARTICLE 30.	LIABILITY AND INDEMNITY	99
30.1	General indemnity.....	99
30.2	Indemnity by the Operator	99
30.3	Notice and contest of claims.....	100
30.4	Defence of claims.....	100
30.5	No consequential claims.....	101
30.6	Limitation of Liability	101
30.7	Survival on Completion/ Option to Exit/ Termination	102
ARTICLE 31.	RIGHTS AND TITLE OVER THE SITE	103
31.1	Operation & Maintenance rights	103
31.2	Access rights of the Authority and others.....	103
31.3	Property taxes.....	103
31.4	Restriction on sub-contracting for operations	103
ARTICLE 32.	DISPUTE RESOLUTION.....	104
32.1	Dispute resolution.....	104
32.2	Adjudication.....	104
32.3	Arbitration	104
32.4	Costs associated with Dispute Resolution	105
32.5	Performance during Dispute.....	105
ARTICLE 33.	DISCLOSURE.....	106
33.1	Disclosure of Specified Documents	106
33.2	Disclosure of Documents relating to safety	106
33.3	Withholding disclosure of Protected Documents	106
ARTICLE 34.	DELETED	107
ARTICLE 35.	MISCELLANEOUS	108
35.1	Governing law and jurisdiction	108
35.2	Deleted.....	108
35.3	Depreciation and Interest.....	108
35.4	Delayed payments.....	108
35.5	DELETED	108
35.6	Liability for review of Documents and Drawings.....	108
35.7	Exclusion of implied warranties etc.....	108
35.8	Survival	109

35.9	Entire Agreement.....	109
35.10	Severability	109
35.11	No partnership.....	109
35.12	Third parties.....	110
35.13	Successors and assigns	110
35.14	Notices.....	110
35.15	Language	111
35.16	Confidentiality.....	111
35.17	Stamp Duty	111
35.18	Counterparts.....	111
SCHEDULES	113	
SCHEDULE A.	DETAILS OF SITE & ASSETS -	115
SCHEDULE B.	SCOPE OF THE PROJECT	117
SCHEDULE C.	APPLICABLE PERMITS.....	119
SCHEDULE D.	PERFORMANCE SECURITY	120
SCHEDULE E.	MAINTENANCE REQUIREMENT	123
SCHEDULE F.	SAFETY REQUIREMENTS.....	125
SCHEDULE G.	ESCROW AGREEMENT	126
SCHEDULE H.	VESTING CERTIFICATE.....	138
SCHEDULE I.	SUBSTITUTION AGREEMENT	139
SCHEDULE J.	DELETED	149
SCHEDULE K.	PROFORMA FOR JOINT INVENTORY INSPECTION.....	150
SCHEDULE L.	FORMAT FOR THE EXCESS VARIABLE REVENUE COMPUTATION	151
SCHEDULE M.	DELETED	152
SCHEDULE N.	CIDCO LEASE DOCUMENT	153

Part I - Preliminary

This Page is intentionally left blank

Government of Punjab

OPERATION & MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (herein referred to as "Agreement") is executed on this ___ day of _____ 202__ at Chandigarh

BETWEEN

The Governor of Punjab, in his executive capacity acting through The Department of Agriculture and Farmer's Welfare, through Punjab State Container and Warehousing Corporation Limited (CONWARE) ("Authority") a wholly owned Punjab State Government Company, incorporated under the Companies Act 1956 and having Corporate Identity Number (CIN) U63023CH1995SGC016299 and engaged in diversified activities relating to warehousing with the prime objective of establishing / Managing Container Freight Station Facility (CFS) and allied activities (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part.**

AND

_____, a (SPV) company incorporated under the provisions of the Companies Act, 2013 with Corporate Identity Number (CIN) _____ and having its registered office at _____ acting through its Director duly authorized in this behalf by Resolution passed by the Board dated _____ (hereinafter referred to as the "Operator" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Second Part.**

AND

M/s _____, [.....] having its registered office at _____, in its capacity as the "Confirming Party" to this Agreement (hereinafter referred to as the "Successful Bidder" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) represented herein through _____, the Authorised Signatory, as authorised vide Board Resolution dated _____, or Power of Attorney dated _____ of the **Third Part.**

Or

The Consortium of (i) M/s _____, [.....] having its registered office at _____ and (ii) M/s _____, [.....] having its registered office at _____, in its capacity as the confirming part to this Agreement (hereinafter referred to as the "Successful Bidder" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) represented herein through M/s _____, [...], the Lead Member of the Consortium, through its Authorised Signatory Mr./Ms. _____ of the Third Part

Each Party herein after shall be referred to individually as "Party" and collectively as "Parties".

WHEREAS:

Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) CONWARE at Nhava Sheva, Maharashtra

- (A.) The Punjab Infrastructure Development Board (PIDB) has been entrusted by the Authority to select the Operator for Operation and Maintenance of Container Freight Station (CFS) (The Project Facilities) at, Plot No. 2, Sector 2, Dronagiri, Nhava Sheva (Taluka Uran, District Raigad), Maharashtra (the "Project"), who shall Operate and Maintain the Project facility, in accordance with the terms and conditions set forth in the Operation & Maintenance Agreement.
- (B.) The Authority is the lessee and in possession of land admeasuring 26.62 acres situated at Plot No.2, Sector -2, Dronagiri, Taluka Uran, District Raigad, Maharashtra ("The Land"). The Land has been leased by CIDCO to the Authority for a period of 60 years commencing from 15.12.1994. The detailed description of land lease is mentioned in RFP Clause 1.1.1 The Authority has fully developed the Land for the purpose of operating a Container Freight Station ("CFS"); The CFS is strategically located and provides the container warehousing back-up facility to Jawaharlal Nehru Port.
- (C.) The Customs Authorities have issued appropriate notifications under the Customs Act, 1962 necessary for handling exports and imports by designating the Project Facility as a Customs Area, and also notified diverse parts of the Project Facility as Public Bonded Warehouse, Warehousing Station etc. Further the Authority has been appointed as the Custodian in respect of the Project Facility by Government of India, Ministry of Finance, Department of Revenue.
- (D.) The Authority is interested in entering into a contractual arrangement with qualified and experienced entities or consortium to operate and maintain its Project Facility ;
- (E.) The Authority had accordingly invited Bids by Tender Notice/ Request for Proposal dated (the RFP) prescribing the technical and commercial terms and conditions for short listing of the bidders and selection of O&M Operator for the Project.
- (F.) After evaluation of the bids received, the Authority had accepted the Bid of [_____ {Successful Bidder} _____ Consortium comprising _____ and _____ (collectively the "Consortium") with _____ as its lead member (the "Lead Member")] and issued its Letter of Award No. _____ dated _____ (hereinafter called the "LOA") to the {Successful bidder/ Consortium} requiring, inter alia, the execution of this Operation and Maintenance Agreement within 20 (twenty) days (extendable further as per discretion of the Authority) of the date of issue thereof.
- (G.) Pursuant to the issuance of Letter of Award vide Letter no _____ Dated _____ the {Successful Bidder/Consortium} has incorporated and constituted a Special Purpose Vehicle ("the Operator") M/s _____ under the Companies Act 2013, and has requested the Authority to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the {Successful Bidder/Consortium} under the LOA, including the obligation to enter into this Operation & Maintenance Agreement pursuant to the LOA for undertaking the Project.
- (H.) The Operator has deposited with the Authority the following:
- (i) The Upfront Fee of Rs 5,00,00,000/- (Rupees five crore only) exclusive of all applicable tax/ GST through online payment mode.
 - (ii) The Performance Security in form of bank guarantee holding validity for a sum equivalent to

Rs. ****/- (Rupees*** crore only) from _____ bank dated _____ for performance of its obligations during the Agreement Period in accordance with Article 9 of this Agreement.

- (I.) The Operator agrees to deposit the Annual Revenue (Annual Fixed Revenue and Annual Variable Revenue) and Upfront Fees of Rs. 5,00,00,000/- (Rupees Five Crore Only) (with all applicable taxes) as per the conditions set forth in this Agreement.
- (J.) The Authority has agreed to the said request of the {Successful Bidder and the Operator}, and has accordingly agreed to enter into this Operation and Maintenance Agreement with the Operator for the execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- (K.) The Operator has fulfilled all the conditions as stipulated in Annexure-2 of the Annexure-I (Letter of Award) of the RFP document.

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

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Affected Party” shall have the meaning as set forth in Article 22.1;

“Agreement” or **“Operation & Maintenance Agreement”** means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Agreement Period” or **“Operation and Maintenance Period”** means the period of 30 years commencing from the Effective Date unless terminated earlier. For avoidance of doubt, it is clarified that the Agreement Period / Operation and Maintenance Period shall be 30 (thirty) years wherein Operator has the option to exit the Agreement after the end of 10th (tenth) year. In such a case, the agreement period would be actual period of Operation and maintenance starting from effective date until expiry of agreement by way of efflux of time, exercise of such exit option; or by way of termination

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including but not limited to rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the development (if required), Operation and Maintenance of the Project during the subsistence of this Agreement;

“Associate” means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, 51% (fifty one per cent) or more of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

“Authority” means Punjab State Container and Warehousing Corporation Limited (CONWARE);

“Authority Representative” means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons

having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“Annual Fixed Revenue” shall have meaning set forth in Article 16.2.1;

“Annual Variable Revenue” shall have meaning set forth in Article 16.2.2;

“Authorizations” shall include the authorizations and permissions granted to and by the Authority under the Customs Act, 1962 (as maybe amended from time to time) in relation to the CFS such as (i) Notification of the Land as a Customs Area and the appointment of the Authority as the Custodian thereof (ii) Notification of part of CFS as public bonded warehouse in charge of the Authority (iii) Notification of part of the CFS warehouse station in charge of the Authority (iv) appointment of the Authority as the warehouse keeper and the right to fix and collect the rent and warehousing charges, as transferred to the operator by this Agreement;

“Bank” means any scheduled commercial bank as notified by RBI.

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

“Bid” means the documents in their entirety comprised in the bid submitted by the {Successful Bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and **“Bids”** shall mean the bids submitted by any and all qualified bidders, also referred to as Bid Document;

“Bid Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“Bid Security” means the security provided by the Operator to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security. This may also be referred to as Earnest Money Deposit (EMD) elsewhere throughout the bid document;

“Book Value” shall mean the written down value in the audited books of the Operator of a specific asset or class of asset in accordance with Companies Act and generally accepted accounting principles and applicable accounting standards; This shall also be referred to as ‘Depreciated Value’

“CFS”/ “Project Facility” denotes Container Freight Station located at Plot No.2, Sector –2, Dronagiri, Nhava Sheva Taluka Uran, District Raigad, Maharashtra State;

“CIDCO Lease” is the Lease Agreement executed between City and Industrial Development Corporation of Maharashtra Limited (“CIDCO”) in favour of the PSWC (Punjab State Warehousing Corporation) and subsequently transferred to the Authority (First PSWC and then to the Authority) and annexed hereto as Schedule N;

“Customs Authorities” shall mean the officials and personnel of the Department of Customs, Government of India, having jurisdiction over the Project Facility under the Customs Act, 1962 (as maybe amended from time to time);

“Change in Law” means the enactment, repeal, modification of any Indian Law including the Customs Act, 1962 (as maybe amended from time to time) or a change in the interpretation or

application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid, which leads to the revocation, withdrawal, modification, suspension of the Authorizations beyond the control of the Parties.

“Change in Ownership” means

- a. Bidder or Members of the Consortium (as case maybe) undertake that they shall collectively hold in SPV, not less than 100% (hundred percent) of its issued and paid up Equity as on the date of signing of the Agreement (agreement date) and that the Lead Member shall hold at least 51% (fifty one percent) of Equity as on the date of signing of the Agreement till the end of lock-in-period. For the purpose of equity holding, lock-in-period shall be defined as 5 years from the agreement date. After such lock in period, each Consortium Member, together with their Associates, whose technical and financial capacity has been evaluated for the purposes of qualification in response to the Request for Proposal, shall hold in SPV, not less than 26% (twenty six per cent) of the issued and paid up Equity till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement. The Sole bidder, together with its associates, shall hold, in the SPV, at least 51% (fifty one percent) of Equity after lock-in-period, and shall continue to hold, till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement;
- b. At no stage during the Lock-in-Period shall any change in the shareholding pattern be made by the Bidder or Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make the Consortium Members or Associates or the Operator non-compliant in accordance with the Article 7 of the Agreement;

“Completion” means the successful completion of the Agreement by efflux of time;

Deleted;

“Consortium” shall have the meaning as set forth in Recital (F);

“Consortium Member” means a legal entity specified in Recital (F) as a member of the Consortium;

“Contractor/Vendor” means the person or persons not associated with the Authority for the purpose of this project, as the case may be, with whom the Operator has entered into any of the third party contracts or any other material agreement or contract for construction, provision of services, procurement of material, labour, equipment and other facilities and utilities as necessary for the functioning of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Operator;

“Consideration” means the total benefits to be given to the Authority by the Operator in lieu of license granted by the Authority in accordance with Article 16;

“**Cure Period**” means the period of 90 (Ninety) days or such further period as may be allowed to the Party which has committed a breach of this Agreement, by the other party for curing the breach and shall commence from the date on which a notice is delivered by the other party to the Party in breach asking the latter to cure the breach(s) specified in such notice;

“**Damages**” shall have the meaning as set forth in Sub-Article (w) of Article 1.2.1;

“**Depreciated Value**” shall mean the written down value in the audited books of the Operator of a specific asset or class of asset in accordance with Companies Act and generally accepted accounting principles and applicable accounting standards; This shall also be referred to as ‘Book Value’

“**Dispute**” shall have the meaning as set forth in Article 32.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 32;

“**Divestment Requirements**” means the obligations of the Operator for and in respect of successful completion of the Agreement Period by efflux of time or in case of exercise of option to exit this Agreement or Termination as set forth in Article 26.1;

“**Document**” or “**Documentation**” means documentation in printed or written form; also the documents in electronic form as admissible under section 65B (1) of the Indian Evidence Act, 1872 as amended;

“**Effective Date**” means the date on which the site is handed over to the operator for Operation and Maintenance. All annual payments including Annual Fixed Revenue and Annual Variable Revenue and payment of taxes etc. shall commence from this Date

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

An “**Empty Container**” shall be a container with No goods or cargo within the same.

“**Encumbrances**” means, in relation to the Project, any encumbrances 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Article 11.1;

“**Escrow Account**” means an account which the Operator shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures as the case may be and shall be credited and debited, in accordance with the provisions of this Agreement, and includes the subaccounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning as set forth in Article 18;

“**Escrow Bank**” shall have the meaning as set forth in Article 18;

“**Escrow Default**” shall have the meaning as set forth in Schedule-G;

“**Equity**” means the sum expressed in Indian Rupees representing the Paid Up Equity Share Capital of the Operator for Operation of the Project, and for the purposes of this Agreement shall

include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 22.1;

“Financial Quarter” shall mean a period of three consecutive months in a financial year; which would commence from the 1st day of the month of April, July, October and January;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

“Government” means the Government of the India;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 30;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 30;

“Independent Consultant” shall have the meaning as set forth in Article 15.1;

“Indirect Political Event” shall have the meaning as set forth in Article 22.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 19, and includes all insurances required to be taken out by the Operator under Article 19.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Insolvency Event” in respect of a Party shall mean:

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like, of itself or of all or a substantial part of its assets or business; (ii) been unable to pay its debts as such debts become due; (iii) enters into a compromise arrangement with its creditors ; (iv) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (v) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the “Code”); (vi) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or

composition or readjustment of debts; or (vii) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (i) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (ii) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days; or (iii) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (F);

“Loaded TEUs” means a container with 20’ length entering or leaving the Project facility with cargo / goods (in accordance with Permitted Activities in Article 3.1.1 of this Agreement) within the same, and is not empty. A Loaded TEU shall include but not limited to Loaded/Stuffed containers, buffer containers, back to Port/Town containers, and en-block containers. The containers shall not include empty containers with no goods or cargo within the same;

“Lock-in-Period” for the purpose of equity holding, lock-in-period shall be defined as 5 years from the Agreement date.

“Minimum Guaranteed Annual Fee (MGAF)” shall mean the Annual Fixed Revenue and Minimum Annual Variable Revenue based on Minimum Guaranteed Throughput (MGT) which shall be paid by the Operator to the Authority in accordance with Article 16;

“Minimum Guaranteed Throughput (MGT)” shall mean minimum number or Loaded TEUs for which the Operator is supposed to pay the Annual Variable Revenue at the quoted rate per TEU in accordance with Article 16;

Deleted;

“Maintenance Requirements” shall have the meaning as set forth in Article 12.2;

“Material Adverse Effect” means a material adverse effect due to any act/ omission or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement which causes a material financial burden or loss to either Party;

“Non-Political Event” shall have the meaning as set forth in Article 22.2;

“**O&M**” means the operation and maintenance of the Project and includes all matters connected with or incidental to such Operation and Maintenance, and provision of services and facilities, in accordance with the provisions of this Agreement;

“**O&M Expenses**” means expenses incurred by or on behalf of the Operator for all O&M including

- (a) cost of salaries and other compensation to employees,
- (b) cost of materials, supplies, utilities and other services,
- (c) Premium for insurance,
- (d) all taxes, duties, cess and fees due and payable for O&M,
- (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs,
- (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and
- (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**Operator**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Operator Default**” shall have the meaning as set forth in Article 25.1.1;

“**Option to Exit**” shall have the meaning as set forth in Article 3.2;

“**Performance Security**” shall have the meaning as set forth in Article 9.1.1;

“**Political Event**” shall have the meaning as set forth in Article 22.4;

“**Project**” means, subject to the provisions of this Agreement, (i) the Operation and Maintenance of the Container Freight Station located at Plot No. 2, Sector 2, Dronagiri, Nhava Sheva (Taluka Uran, District Raigad), in accordance with the rules and guidelines of the Customs Authorities, CIDCO Lease Agreement and other Applicable Laws; (ii) carrying the permitted activities; and (iii) transfer of the Container Freight Station to the Authority at the end of the Agreement Period or on prior Termination of the Agreement;

“**Project Agreements**” means this Agreement, and any other material agreements or contracts between the parties defined in this Agreement, but does not include the Escrow Agreement and Substitution Agreement;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Site handover or otherwise; (b) tangible assets such as civil works and equipment including foundations, (c) Project Facilities situated on the Site; (d) all rights of the Operator under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and Authorizations relating to or in respect of the Project;

“**Project Site**” or “**Site**” shall mean the Container Freight Station located at Plot No. 2, Sector 2, Dronagiri, Nhava Sheva Taluka Uran, District Raigad, Maharashtra State together with all buildings and permanent structures erected on the Land particularly delineated in Schedule A hereto;

“**Right to Operate & Maintain**” shall have the meaning as set forth in Article 3.1.1;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.,” “Rs.” or “Rupees” or “Indian Rupees” or “Indian National Rupee (INR)” means the lawful currency of the Republic of India;

“Request for Proposal” or “RFP” shall have the meaning as set forth in Recital (B);

“Safety Requirements” shall have the meaning as set forth in Article 13.1.1;

“Scope of the Project” shall have the meaning as set forth in Article 2.1;

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

“State” in reference to the Authority shall be the State of Punjab and in reference to Business Day shall be the State of Maharashtra and

“State Government” means the Government of the State of Maharashtra and Punjab;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Article 20.1.1;

“Tariff” means charge levied on and payable by the User of the project or a part thereof to the Operator in accordance with this Agreement;

“Taxes” means any taxes including Goods and Service tax, basic customs duties, local taxes, cess and any imposed or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality as per applicable laws of land, including any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the termination under Article 25.3 of this agreement;

“Termination Notice” means the communication issued for terminating this Agreement in accordance with Article 25;

A “TEU” would mean ‘Twenty Foot Equivalent’ container with length of 20’ or more and height of 8’ or more. The containers with length 40’ or more and height of 8’ or more shall be considered as Forty Foot Equivalent (FEU). 1 FEU shall be considered as 2 TEUs for intents and purposes. This shall include Dry, Reefer, Tank, Over Dimensional, High Cube or Open Top Units. A Container/ Palette of Length less than 20’ shall be considered as 1 TEU.

For avoidance of doubt, a non-containerized cargo handled by the Operator in accordance with Permitted Activities in Article 3.1.1 of this Agreement shall be converted to TEUs based on their net weight or Volumetric weight whichever yields the resultant TEUs on higher side as follows:

For the purpose of calculations, 16 Tons Cargo Weight or Volumetric Weight whichever is higher = 1 TEU (rounded off to two decimals)

“**Transfer Date**” means the date on which this Agreement expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Upfront Fee**” shall have meaning set forth in Article 16.1;

“**User**” means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning as set forth in Article 26.4; and

Deleted

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) 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;
- (b) references to 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;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) 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;

- (i) any reference to day shall mean a reference to a calendar day;
- (j) Reference to a **“business day”** shall be construed as reference to a day (other than a Sunday or a statutory holiday as declared by the Government of Maharashtra, (in which the project is located)) on which banks in the State of Maharashtra are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- (m) 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;
- (n) the words importing singular shall include plural and vice versa;
- (o) References to any gender shall include the other and the neutral gender;
- (p) **“lakh”** means a hundred thousand (100,000) and **“crore”** means One hundred lakhs (1,00,00,000);
- (q) **“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;
- (r) 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;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, lease, license or document of any description shall be construed as reference to that agreement, deed, instrument, lease, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Consultant shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Consultant, as the case may be, in this behalf and not otherwise;

- (u) the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) forms 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;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Operator to the Authority and/ or the Independent Consultant shall be provided free of cost and in three copies, and if the Authority and/or the Independent Consultant is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of agreements, Articles and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein;
- (c) the LOA issued to the Successful Bidder;
- (d) written addenda to the Bid;
- (e) bid document; and
- (f) the Bid.

1.4.2 Subject to provisions of Article 1.4.1, 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 specific Articles 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 any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
- (d) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- (e) between any value written in numerals and that in words, the latter shall prevail; and
- (f) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

This Page is intentionally left blank

Part II - The Operation & Maintenance

This Page is intentionally left blank

ARTICLE 2. SCOPE OF THE PROJECT

2.1 Scope of the Project

The Authority shall hand over the entire Project Facilities in the good condition to the Operator in accordance with the provisions of this Agreement.

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Operation & Maintenance Period:

- (a) to Operate and Maintain the Project as specified in Schedule B, in conformity with the Lease Agreement entered between the Authority and the City and Industrial Development Corporation of Maharashtra Limited (the “**CIDCO**”), Customs Regulations and other Applicable laws; The CIDCO Lease Document is enclosed at Schedule N.
- (b) to perform and fulfil any other obligations and matters incidental thereto or necessary for the performance of the Operation and Maintenance under this Agreement and;
- (c) to transfer the Project to the Authority upon Completion by efflux of time/Option to Exit/Termination, in accordance with the provisions of this Agreement

ARTICLE 3. GRANT OF OPERATION AND MAINTENANCE RIGHT

3.1 The Operation & Maintenance

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Operator the right, license and authority to operate & maintain the Project (the "O & M Right") during the Agreement Period of 30 (thirty) years and the Operator hereby accepts and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

The Operator shall have right to refurbish the Project/carry out modifications (including deconstruction, demolition & building new assets) in the premises to suit the business needs of the Operator. However, it is clarified that in case of deconstruction/ demolition, the Operator will have to submit Additional Performance Security (APS). The APS should be equal to the cost and validity as certified by the Independent Consultant for the value of the deconstruction/demolition works undertaken by the Operator. This Bank Guarantee shall be returned to the Operator on successful reconstruction of the area equal to or higher than the area demolished. It may be noted that area of only permanent structure shall be considered. For the purpose of this Article, installation of pre-fabricated structures, movable structures etc. shall not be considered as reconstruction. Such deconstruction and subsequent reconstruction work should be completed in the validity of this Agreement period.

The land has been allotted to the Authority by City and Industrial Development Corporation of Maharashtra Limited (the "CIDCO") on lease for a period of 60 (sixty) years w.e.f. 15.12.1994 as mentioned in clause 1.1.1 of the RFP (Lease Document enclosed at Schedule N).

3.1.2 Subject to and in accordance with the provisions of this Agreement, the right hereby granted shall oblige or entitle (as the case may be) the Operator to:

- (a) access of the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) to operate and maintain the Project in accordance with the Permitted Activities as mentioned in Article 3.1.3 and Schedule B of this Agreement;
- (c) to have access and liberty to finance, operate and maintain the proposed Project with the associated facilities and services during the Agreement Period in accordance with the provisions of this Operation and Maintenance Agreement & its Schedules thereof. Any refurbishment/ construction/reconstruction of area /additions which are of permanent nature(Permanent Structure/ Structures, embedded to the ground) made by the Operator in respect of the Project shall be deemed to be the property of the Authority and the Operator relinquishes all his rights in such property in favour of the Authority;
- (d) right and authority, during the Agreement Period, to carry out the Permitted Activities in relation to the Project;

- (e) demand, collect and appropriate Tariffs from Users using the Project or any part thereof; However, the Operator shall at all times, display the applicable Tariff under and in accordance with the Customs Manual as may be amended from time to time
- (f) perform and fulfil all of the Operator's obligations under and in accordance with this Agreement;
- (g) market the services of the Project Facility as deemed necessary by the Operator. All disputes arising between the Operator with its trade / channel partner(s) during the Agreement Period shall be the sole liability of the Operator for addressal/ redressal without the obligation/ intervention of Authority;
- (h) manage, operate and execute rights over all or any part of the Assets without any limitation or restriction other than those expressly set out in this Operation & Maintenance Agreement & Schedule B;
- (i) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and

However, it is clarified that the Operator can neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or on the whole or any part of the Project nor transfer, license or part possession thereof, save and except as expressly permitted by this Agreement.

3.1.3 The activities that need to be carried on, from the Effective Date, in the Project Facilities include the following ("**Permitted Activities**"):

- (a) handling the import and export of cargo including delivery of containers;
- (b) handling the import and export of hazardous cargo in accordance with the applicable laws;
- (c) operate and maintain a container yard for handling of empty containers and carrying out repair facilities including refurbishing containers;
- (d) carry out pre-trip constructions of reefer containers and storage of reefer containers;
- (e) provide warehousing facilities;
- (f) provide third party logistics;
- (g) provide bonded warehouse facilities;
- (h) survey and inspection of containers;
- (i) repair yard for equipment's and other related equipment;
- (j) Value added services such as Packaging, repackaging, barcoding and labelling, cold storage and
- (k) Logistics and related services
- (l) any other container/cargo (bulk/break bulk) handling, transportation, warehousing and allied services in accordance to Schedule N and Applicable Laws.

3.2 Agreement Period

Subject to early termination of this Agreement in accordance with its terms, the term of this Agreement shall be 30 (thirty) years commencing from the Effective Date ("**Agreement Period**") extendable further on mutually agreed terms and conditions between the parties. However, the Operator shall have right to exit the Agreement after 10 (ten) years from the effective date of

this Agreement. The Operator shall by way of a written notice, inform to the Authority about its intent to exercise such right to exit, at least one year in advance.

ARTICLE 4. DELETED

ARTICLE 5. OBLIGATIONS OF THE OPERATOR

5.1 Obligations of the Operator

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Operator shall, at its own cost and expense, procure finance for and undertake the operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations in compliance with CIDCO Lease Agreement (Schedule N), Applicable Laws and Regulations, this Agreement, or arising hereunder.
- 5.1.2 The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement as prescribed in Schedule C.
- 5.1.3 The Operator shall use the Project facilities in accordance with Schedule N and local laws/byelaws of CIDCO/ State of Maharashtra /electric distribution company/water supply company or any other authority or body ("**Local Authority**") as may be applicable to the premises and locality in addition to the Guidelines of Government of India.
- 5.1.4 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Operator shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.5 The Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) shall at all times strictly comply with the provisions of the Customs Regulations and all directions, advice and decision of the Customs Authorities in respect of the Operation and Maintenance of the Project facilities;
 - (b) shall be solely responsible for payment of all fines, penalties, interest & charges that may be imposed by the Customs Authorities under the Customs Regulations;
 - (c) shall not use Project facility for any other purpose other than Permitted Activities in accordance with Article 3.1.3;
 - (d) The Operator shall be liable and responsible to pay fines, damages, penalties, etc. which may be imposed by any Local Authority for misuse of the Project facilities during the term of the Agreement.
 - (e) shall be solely responsible for obtaining the prior approval of CIDCO as well as the Authority for any alteration or modification to the existing buildings to suit the future business plans provided that any such deconstruction and subsequent reconstruction work undertaken should only be completed in the currency of this Agreement;
 - (f) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Schedule C, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) CONWARE at Nhava Sheva, Maharashtra

- (g) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
- (h) perform and fulfil its obligations under the Financing Agreements;
- (i) shall not commit any breach of covenants in Schedule N;
- (j) shall bear the liability in respect of any loss or damage caused to the existing Project facility, for any reason whatsoever during the Operation & Maintenance Period;
- (k) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (l) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator 's obligations under this Agreement;
- (m) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violate any of the provisions of this Agreement;
- (n) shall comply with the recommendations of structural audit report regarding repairs of various parts of the building;
- (o) apportioning the statutory payments made by the Authority from the Escrow Account on the demand raised by the Authority on the Operator for the following, but not limited to:

Name of Local Government Authority	Particulars
CIDCO Ltd.	Service Charges of Plot No 2 and any amounts due and payable
Maharashtra Pollution Control Board	Consent Fees for establishment and cess
Tehsildar (Uran) GOM	Non-Agricultural tax
Maharashtra State Electricity Distribution Company Ltd.	Electricity charges
CIDCO	Water charges
Sarpanch Gram Panchayat (Pagote)	Gram Panchayat Tax
Commissioner Customs – JNCH	MOT Charges against staff deployment
Commissioner Customs – JNCH	Cost recovery charges, if any
Commissioner Customs – JNCH	Insurance Policy annual against Bond Cargo
Commissioner Customs – JNCH	Bank Guarantee Renewal

- (p) transfer the Project to the Authority upon Completion/ Option to Exit /Termination of this Agreement, in accordance with the provisions of this Agreement along with all

statutory approvals, documents, drawings and warranties of equipment, additional constructed area.

- (q) Shall not create any Encumbrance on the Project Facility or any portion thereof;
- (r) The Operator shall be responsible of arranging any additional electrical load at the Project facilities at its own cost with the prior permission of Authority
- (s) All fees, charges and dues pertaining to the operation of the Project facilities shall be borne by the Operator. The Authority shall seek apportionment from the Escrow Account for the fees, charges and dues as paid by the Authority under applicable laws.
- (t) Provide furnished office accommodation of minimum 1,000 sq. ft. along with one computer, printer, internet connection etc. in administrative block to the authority representatives during the Agreement Period.

5.1.6 The operator should develop/procure a software which captures the entire volume of business, the containers coming in, containers going out, with description of their weight and volume and description of goods, the details of the customer (the importer / exporter / handling agent etc. who brings their / their customers' goods for customs clearance, storage and handling & transportation, value addition etc.), the length of storage of goods in different zones (bonded / non-bonded warehouse / open yards etc.).

In addition to afore-mentioned requirements, the Operator shall also ensure that the software is capable enough to provide relevant information pertaining to details of Less Container Load (LCL) Cargo & Full Container Load (FCL) Cargo, Dimensional/Volumetric details of the Cargo (if any, in case of bulk cargo), package details with serial numbers, details of cargo ageing, cargo movement within the facility and details of hazardous or special treatment cargo (if any handled) and the Bill of Lading/ Shipping Bill filed, etc

The operator shall provide the cloud based link of such software to the representative of authority as well as Independent Consultant for monitoring the activities of the Project and volume of business in terms of TEUs for the purpose of accounting for variable consideration. Such a link and access shall be provided by the operator through internet to the locally placed staff as well as to the central control room in headquarters of Conware. However, in case the authority needs any additional information, the operator shall be required to provide the information through IT intervention or otherwise as demanded by the authority. The Operator is required to ensure minimum down-time for the Cloud based link and shall ensure that the Cloud Based Link is accessible on 24*7 basis. In case of any breakdown due to untoward incident, Operator shall ensure to get it restored immediately.

The data provided from the Software may be verified using other sources by Independent Consultant and the Authority.

5.1.7 The Operator shall open an escrow account in accordance with Article 18 of this agreement. In the event that the Permitted Activities are carried on by the Operator, the payments shall be deposited into the escrow account. The Escrow arrangement with a scheduled commercial bank ("Escrow Account"). The escrow arrangement shall inter alia provide for receipt of payments into the escrow account, payments to be made to the Operator from the escrow account after

appropriation of all dues as payable to the appropriate Authorities, along with other applicable payments to be made by the Operator in accordance with this Agreement.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Operator from its obligations or liability hereunder.
- 5.2.2 Within 7 (seven) days of execution of any Project Agreement (including financing agreements if any) or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Operator shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Operator shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority.
- 5.2.4 The Operator shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination (the “**Covenant**”). Further, it is clarified that in case both the Authority and Lenders’ Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements.
- 5.2.5 All contracts entered in to by the Operator with shipping companies, transporters, contractors, agents, or any other third parties in relation with the Scope of Work of this Agreement, shall be coterminous with this Agreement. The Operator shall not enter into any sub-licensing arrangement for the Project Facility with any other party and ensure that all such contracts executed must contain a specific provision to this effect and that the Authority shall in no case be liable for the obligations, if any, arising out of such contracts after the Completion by efflux of time /exercise of exit option /Termination of this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 Change in ownership shall be as specified under Article 1 and Article 7.
- 5.3.2 Deleted

5.4 Obligations relating to Management of the SPV

The Operator shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

- a) to alter or add to the provisions of the Memorandum of Association;
- b) to alter or add to the articles of Association;
- c) to change the name of the Operator;
- d) to reduce the Share Capital;
- e) to commence any new lines of business;
- f) to consent to a director or his or her relative or partner or firm or private company;
- g) holding an office or place of profit, except that of Managing Director, Manager, Banker;
- h) or trustee for debenture-holders of the Operator;
- i) to make inter-corporate loans and investments or guarantee or security (except where such security or payment is to be made to the Authority) to be given, if the aggregate amount thereof, exceeds the limit of [30% (thirty per cent)] of the Operator's paid-up share capital;
- j) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;
- k) for various other matters pertaining to the winding up of the Operator; and
- l) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Operator.

5.5 Obligations relating to employment of foreign nationals

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator.

5.6 Obligations relating to employment of trained personnel

The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function.

5.7 Obligations relating to Taxes for the services rendered to Authority

The Operator shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project Facility and Project Assets.

5.8 Obligations relating to information

5.8.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Operator shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

5.8.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Operator's activities under or pursuant to this Agreement which

the Authority proposes to publish, the Operator shall provide such comments to the Authority in the manner and form required by the Authority.

5.9 Sole purpose of the Operator

The Operator having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Operator or any of its subsidiaries shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

ARTICLE 6. OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

- (i) Authority shall during the Agreement Period, maintain all Authorizations standing in its favour in respect of the Project facility.
- (ii) Authority shall permit and authorize the Operator to enter into appropriate contracts for carrying on the Permitted Activities and receive payments there-under on behalf of the Authority in the escrow account.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Operator

The Operator represents and warrants to the Authority that:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) {Successful Bidder/Consortium Members} and their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (d) 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;
- (e) It is subject to the laws of India, 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;
- (f) The information furnished in the Bid 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;
- (g) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of the Successful Bidder/ any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) 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;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality 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;

- (j) 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;
- (k) it shall at no time undertake or permit any Change in Ownership; and that
 - a. Bidder or Members of the Consortium (as case maybe) undertake that they shall collectively hold in SPV, not less than 100% (hundred percent) of its issued and paid up Equity as on the date of signing of the Agreement (agreement date) and that the Lead Member shall hold at least 51% (fifty one percent) of Equity as on the date of signing of the Agreement till the end of lock-in-period. For the purpose of equity holding, lock-in-period shall be defined as 5 years from the agreement date. After such lock in period, each Consortium Member, together with their Associates, whose technical and financial capacity has been evaluated for the purposes of qualification in response to the Request for Proposal, shall hold in SPV, not less than 26% (twenty six per cent) of the issued and paid up Equity till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement. The Sole bidder, together with its associates, shall hold in the SPV, at least 51% (fifty one percent) of Equity after lock-in-period, and shall continue to hold, till the completion of Agreement by efflux of time or by exercise of option to exit or Termination of this Agreement;
 - b. At no stage during the Lock-in-Period shall any change in the shareholding pattern be made by the Bidder or Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make the Consortium Members or Associates or the Operator non-compliant in accordance with this Article 7. of the Agreement;
- (l) {The Successful Bidder/ each Consortium Members} is/are duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with the Operator pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) All its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- (n) No representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality 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;
- (o) 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 entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (p) All information provided by the {Successful Bidder/Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (q) All undertakings and obligations of the Operator arising from the Request for Proposals or otherwise shall be binding on the Operator as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Operator that:

- (a) It has full power and authority to execute, deliver and perform its obligations under this Agreement and 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;
- (b) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under this Agreement;
- (d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) 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;
- (f) It has complied with Applicable Laws in all material respects;
- (g) It has the right, power and authority to manage and operate the Project; and
- (h) It shall procure good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Operator.

7.3 Disclosure

- (a) 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.

- (b) Neither the Authority nor any of its agents or employees shall be liable to the Operator in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
- (i) any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Operator in relation to the Project; and/or
 - (ii) any failure to make available to the Operator any materials, documents, drawings, plans or other information relating to the Project.

ARTICLE 8. DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator, the {Successful Bidder/Consortium Members} and their Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9. PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Operator shall, for the performance of its obligations during the Operation & Maintenance Period hereunder, provide to the Authority on or before the date of signing of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to as provided in Article 9.1.2 and 9.1.3.

9.1.2 The “Performance Security” for:

- a) Year 1 to Year 5 would be the average of 50% of the Minimum Guaranteed Annual Fee (MGAF) of the first five year in the form set forth in Schedule-D.
- b) For all the subsequent 5-yearly intervals shall be the average of 100% of the MGAF for the respective intervals of five year in the form set forth in Schedule-D
- c) The Escalation shall be taken as 4% p.a. over previous years’ value from 1st April 2023 in case of Annual Variable Revenue (the rate per TEU) and from 1st April 2024 in case of Annual Fixed Revenue for computation of future value of MGAF which would be solely for purpose of arriving at value of Performance Security of 5 yearly intervals.

9.1.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Operator on or before the date of signing of this Agreement, the Authority may encash the Bid Security/EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement/ RFP shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator , and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Validity of Performance Security

The Operator shall provide the Performance Security initially for a period of 5 (five) years; provided that it shall procure a new Performance Security or extend the validity of the Existing Performance Security, in accordance with 9.1.2 and 9.1.3 of this Agreement, at least 2 (two) months prior to the date of expiry thereof. Upon the Operator providing the New Performance Security or an extension to the existing Performance Security, the previous Performance Security shall be released and the Authority shall return the same to the Operator within a period of 7 (seven) business days from the date of submission of the New Performance Security.

9.3 Appropriation of Performance Security

Upon occurrence of Operator Default, 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 Operator Default. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a

fresh Performance Security, as the case may be, failing which the Authority may at its discretion, terminate this Agreement in accordance with Article 25.

9.4 Release of Performance Security

The Performance Security for the sum equivalent to 50% of the average of MGAF of first 5 years shall be valid till 5th year from the Effective Date and shall be released to the Operator after the end of 5th year from the Effective Date and upon submission of the Performance Security for the sum equivalent to 100% of the average of MGAF for every subsequent 5 year interval thereafter provided for the agreement period. For the Performance Security of each interval, the claim period shall be extended by one year from completion of validity period. However, that the Performance Security shall not be released and shall be kept alive by the Operator if the Operator is in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Article 9.3, the Authority shall release the Performance Security forthwith.

The Performance Security for the sum equivalent to 100% of MGAF thereafter, shall be valid till remaining Agreement Period and shall be released to the Operator at the end of 3 (Three) years from the Transfer date provided, however, that the Performance Security shall not be released and shall be kept alive for further 3 years by the Operator if the Operator is in breach of this Agreement. Further, in case of any Legal action pending the Performance Security of the Operator shall be kept until the conclusion of such legal action.

9.5 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 Operator 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 Damages payable by the Operator, and the amount so determined shall be appropriated from the Performance Security.

9.6 Additional Performance Security

The Operator shall have right to refurbish the Project/carry out modifications (including deconstruction, demolition & building new assets) of the premises to suit the business needs of the Operator. However, it is clarified that in case of deconstruction/ demolition, the Operator will have to submit Additional Performance Security (APS). The APS should be equal to the cost and validity as certified by the Independent Consultant for the value of the deconstruction/demolition works undertaken by the Operator. This Bank Guarantee for APS shall be returned to the Operator after one year or after the end of the defect liability period (as determined by Independent Consultant only) after the successful reconstruction of the area equal to or higher than the area demolished. It may be noted that area of only permanent structure shall be considered. For the purpose of this Article, installation of pre-fabricated structures, movable structures etc. shall not be considered as reconstruction. Such deconstruction and subsequent reconstruction work should only be completed in the currency of this Agreement.

ARTICLE 10. HANDING OVER OF THE SITE

10.1 The Site

The Authority shall grant to the Operator, access to the Project Site including the existing infrastructure, pursuant to completion of a joint inspection and verification (at least 15 days prior to Effective Date) of the inventory and records of assets existing in the property, in the good condition, free from all encumbrances for all intents and purposes of this Project.

The Joint Inspection shall be conducted by the Authority Representative, Independent Consultant and Operator within 15 days from the date of the issuance of notice for Joint Inspection by the Operator.

10.2 Access and Site Handover

10.2.1 In consideration of the Upfront Fee, Annual Fixed Revenue and Annual Variable Revenue and the covenants and warranties on the part of the Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from the Effective Date, Operation and Maintenance (O&M) rights of entire Project comprising the Site which is described, delineated and shown in Schedule A hereto, in the good condition to the Operator; free of any Encumbrances, to operate and maintain the said premises, and carry out refurbishment work if at the choice of the Operator together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Agreement Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.2 It is expressly agreed that the O&M rights granted hereunder as per Article 10 shall terminate automatically and forthwith, without the need for any action to be taken by the Authority in case of Completion/Option to Exit/Termination

10.2.3 The Authority shall handover entire Project Facilities to the Operator in the good condition. The Authority has conducted a structural assessment of the buildings in the premises and the report has been shared. The said structural assessment report (the report) identifies the repairs required in various parts of the buildings in the premises and also details out various methods of repairs and retrofitting to bring the buildings in 'good condition'.

The Authority shall endeavour to get the identified repairs done before handing over the Project Facilities to the Operator. However, if all the repairs are not completed by the current operator / Authority till the handing over of the site, the selected Operator may undertake the balance work done at its own level in which case the expenses incurred shall be reimbursed by the Authority for carrying out such works at the rates as certified by the Independent consultant which shall not be more than the rates prescribed in the report. Such reimbursement shall be done through the escrow account, only after completion of such

balance work and certification to the same by Independent Consultant and shall be set off from the immediate next quarterly Instalment of Annual Consideration to be paid by the Operator.

In case the Operator has a plan not to use the previous facilities or has a plan to demolish and reconstruct a part of the premises, hence wouldn't carry out or require repairs, then no payment shall be made to the Operator for that part.

- 10.2.4 It is expressly agreed that trees on the Site are property of the Authority except that the Operator shall be entitled to exercise usufructuary rights thereon during the Agreement Period except the Mobile Tower as per Article 11 of this Agreement.

10.3 Assessment of Site and structures

- 10.3.1 Pursuant to the notice specified in Article 10, the Authority Representative, Independent Consultant and the Operator shall, on a mutually agreed date and time, inspect the Site. The Independent Consultant shall prepare a memorandum containing an inventory of the assets (both movable and immovable) to be transferred by the Authority to the Operator for the execution of the Project within 7 (seven) days from the joint site visit. A copy of the Memorandum shall be shared with the Authority and the Operator. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Article 10.2.2, be deemed to constitute a valid proof of handover to the Operator for free and unrestricted use of the Site during the Agreement Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

- 10.3.2 On and after signing of the Agreement, and until the Transfer Date, the Operator shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Operator shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.4 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Operator pursuant hereto free from all Encumbrances and occupations and without the Operator being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Agreement Period, except insofar as otherwise expressly provided in this Agreement.

10.5 Protection of Site from Encroachments

During the Agreement Period, the Operator shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Operator to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Operator therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Access to the Authority and the Independent Consultant

The O&M rights and handing over of the Site granted to the Operator hereunder shall always be subject to the right of access of the Authority, Authorities Representative, its employees and agent and the Independent Consultant for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

ARTICLE 11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Operator shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use.

The Authority vide a separate arrangement has entered into an Agreement for mobile tower(s) erected on the roof of the administrative building, the term of this Agreement is valid till 09.08.2025. The Operator shall at no time claim any privilege (monetary or otherwise) from the Authority in this context.

11.2 New utilities and roads

The Operator shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities and maintenance of the mobile tower.

ARTICLE 12. OPERATION AND MAINTENANCE

12.1 O &M obligations of the Operator

12.1.1 During the Agreement Period, the Operator shall operate and maintain the Project in accordance with this Agreement. The obligations of the Operator hereunder shall include:

- (a) permitting and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions, undertaking major maintenance in accordance to the instructions of Independent Consultant;
- (b) collecting and appropriating the Tariff as per Applicable rates for and on behalf of the Authority;
- (c) minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (d) alarms for fire, security, CCTV cameras for entire facility (including at entry & exit points), must be in place and in working order. Routine maintenance records shall be kept, detailing safety checks of the equipment to ensure compliance with Safety Requirements in accordance with Article 13;
- (e) preventing, with the assistance of the concerned law enforcement agencies if needed, any encroachments on, or unauthorized entry to the Project;
- (f) protection of the environment and provision of equipment and materials thereof as per law;

12.2 Maintenance Requirements

The Independent Consultant shall conduct the structural audit and maintenance review after every 3 (three) years from the Effective Date and the Operator has to comply with the modifications/ recommendations and timelines for the repair/rectification of defects as pointed out by the Independent Consultant at its own cost within the period specified by the Independent Consultant. The repair/rectification of defect shall be subject to the verification and acceptance by the Independent Consultant. The Operator and the Independent Consultant shall arrive at appropriate timelines for the repair program in consultation with the Authority.

12.3 Damages for breach of maintenance obligations

12.3.1 In the event that the Operator fails to repair or rectify any defect or deficiency in the appropriate timelines for the repair program, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of the Performance Security, and (b) 0.05% (zero point zero five per cent) of the cost of such repair or rectification as estimated by the Independent Consultant. Recovery of such Damages shall be without prejudice to the rights of the Authority from the Performance Security under this Agreement. The Operator shall replenish the Performance Security within 15

days to its original amount. The Authority may terminate at its own discretion, the agreement once the amount of such damages as per above mentioned formula reaches 75% of the value of Performance Security.

- 12.3.2 The Damages set forth in the Agreement may be assessed and specified forthwith by the Authority. The Operator shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure under Article 32 of this Agreement shall apply.

12.4 Modifications to the Project

The Operator shall not carry out any material modifications to the Project, provided that the Operator shall notify the Authority of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within 7 (Seven) days of receiving the Operator 's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Laws and the provisions of this Agreement with prior approval of the Authority.

12.5 DELETED

12.6 Quarterly Tariff Statement

During the Agreement Period, the Operator shall furnish in 2 (two) copies each to the Authority and to the Independent Consultant, within 15 (fifteen) days of completion of each quarter, a statement of Tariff showing the appropriate details of Cargo handled by the Operator as per the format prescribed by the Authority or the Independent Consultant. The Tariff statement would be required to be certified by the Statutory Auditor of the Operator. The Operator shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its functions.

The Independent Consultant shall on the basis of the information provided by the Operator in pursuance of this Article 12, compute the excess variable revenue in accordance with Article 16 of this Agreement. Within a period of 15 (fifteen) days' time, the Independent Consultant shall notify to the Authority and to the Operator (by way of a written demand) the variation, if any, observed by the Independent Consultant in the Consideration received from the Operator.

ARTICLE 13. SAFETY REQUIREMENTS

13.1 Safety Requirements

13.1.1 The Operator shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of Project facility and its users. In particular, the Operator shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements.

13.1.2 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Operator shall be undertaken in accordance with the provisions of Article 13.

ARTICLE 14. DELETED

ARTICLE 15. INDEPENDENT CONSULTANT

15.1 Appointment of the Independent Consultant

15.1.1 The Authority shall appoint an Independent Consultant (IC) (the “**Independent Consultant**”) in accordance with Article 15.1.2, to monitor the Project. The IC shall function in accordance with the duties defined under Article 15.2 of this Agreement.

15.1.2 The Authority by way of a Limited Tender shall invite quotations from the Consultancy Firms empanelled with Government Undertakings and Statutory Bodies. Based on the quotations submitted, the Authority will select and appoint the Independent Consultant on least cost basis. For the avoidance of doubt, Government Undertakings and Statutory Bodies shall include Jawaharlal Nehru Port Trust, Indian Ports Association, National Highways Authority of India/Ministry of Road Transport & Highways, Central Public Works Department, RITES, National Building construction corporation, Government of Punjab, Government owned Consultancy firms , or any other appropriate Government Undertakings as may be deemed fit by the Authority etc.

The remuneration, cost and expenses of the Independent Consultant shall be equally borne by the Authority and the Operator. Such remuneration, cost and expenses shall be apportioned from the Escrow Account.

15.2 Duties of Independent Consultant

The duties of the Independent Consultant shall be bifurcated into two types of functions:

15.2.1 Technical Functions

- (a.) The Independent Consultant shall be responsible to review and vet the plans for modifications given by Operator.
- (b.) The Independent Consultant shall be responsible to review and vet all building related permissions and to recommend on behalf of the Authority to whether all permissions are as per guidelines of CIDCO and other guidelines applicable.
- (c.) The Independent Consultant shall prepare the Inventory during the joint inventory inspection between the Authority and Operator in accordance with Conditions issued to be fulfilled along with the issuance of Letter of Award. However, if the IC is not appointed at the time of joint inventory inspection, the authority can appoint any entity as per its discretion to take up an intermediary role of an IC.
- (d.) The Independent Consultant shall, in principle, be responsible for review of, Maintenance Program and monitoring the progress of the Project.
- (e.) The Independent Consultant shall certify the plan and costing for the purposes of refurbishment work if any. The new construction shall not be less than the area demolished. The Independent Consultant shall also be responsible for reviewing and recommending the refurbishment work, if any, proposed to be carried out by the Operator.
- (f.) Inspect the Site during at all reasonable times and upon reasonable notice to the Operator and have access to all parts of the project site as per the Agreement.

(g.) The Independent Consultant shall conduct the structural audit after every 3 (three) years and the Operator has to comply with the modifications/ recommendations provided by the Independent Consultant (structural audit reports to be provided preferably in the last quarter of that financial year).

(h.) The Independent Consultant shall certify cost and the repairs (if any) to be carried out by the Operator in accordance with Article 10.2.3 of this Agreement.

15.2.2 Commercial Functions:

(a.) The independent consultant shall check the daily data provided by the operator through their software about the volume handled by CFS on weekly basis and reconcile the statements about the volume of business in terms of TEUs & Tons handled by the CFS.

(b.) The Independent Consultant shall on a quarterly basis verify the Annual Variable Revenue paid by the Operator Quarterly and compute the variation, if any, as per Article 16.2.2.3; based on Independent Consultant's report, the payment of Annual Variable Revenue shall be revised and adjustments shall be done in next quarterly payment. Independent Consultant shall verify such volume of business of containerized and non-containerized business (TEUs / Tons as the case may be) available from software access provided by the operator against periodic physical inspection of records and inventory of goods.

(c.) The Independent Consultant shall inspect periodically or at random the records, documents and data etc. of the Operator and verify the samples or take measurements as per the Operation & Maintenance Agreement.

(d.) The Independent Consultant shall monitor the escrow account and shall monitor inflows and outflows from escrow account.

15.2.3 General Functions:

(a.) The Independent Consultant shall certify the occurrence of any such Force Majeure Event; however, the same would be subject to verification by the Authority.

(b.) Perform such functions as may be provided in the Agreement or authorized by Authority during the contract period from time to time.

(c.) To seek explanations from the Operator for delays or non-compliance with the quality control parameters;

(d.) To notify competent authority of delays and non-compliances and the explanations relating thereto for any remedial measures to be taken in this behalf.

For the avoidance of doubt, unless otherwise specified in this Agreement or its Schedules, the Independent Consultant shall within a period of not more than 15 (Fifteen) days submit his comments / recommendations with the Authority as well as the Operator, on the submissions made by the Operator.

15.3 Authorised signatories

The Authority shall require the Independent Consultant to designate and notify to the Authority and the Operator up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Consultant, and any communication or document required to be signed by the Independent Consultant shall be valid and effective only if signed by any of the designated

persons; provided that the Independent Consultant may, by notice in writing, substitute any of the designated persons by any of its employees.

15.4 Review and Termination of the Independent Consultant

15.4.1 The Authority may at any time from time to time at its sole discretion, without assigning any reason, review/ inspect the reports and recommendations provided by the Independent Consultant and seek such additional information as may be deemed fit by the Authority, in order to provide necessary clarifications and explanations. Upon successful completion of such review or inspection, the Authority may ask the Independent Consultant to provide necessary clarifications/ justification and remedies if any.

15.4.2 The services of the Independent Consultant shall be taken throughout the validity of the agreement. However, the performance of the Independent Consultant shall be reviewed periodically, by the Authority. In case the Operator has any grievance or observations about the performance of the Independent Consultant, it shall communicate to the Authority in written form along with appropriate reasons. The Authority shall consider the same and seek clarifications on the issues raised by the Operator. The Authority may at its own discretion take necessary actions thereafter. In the event of change in Independent Consultant, the authority shall communicate the Operator in writing about the same.

This Page is intentionally left blank

Part III Financial Covenants

This Page is intentionally left blank

ARTICLE 16. CONSIDERATION BY THE OPERATOR

16.1 Upfront Fee

Subject to provisions of this Agreement and in consideration of the grant of O & M Right, the Operator has made the payment of Rs.5,00,00,000/- (Rupees Five Crore only) plus applicable taxes extra, on or before the date of signing of this Agreement; and has accepted to make payment of Rs.5,00,00,000/- (Rupees Five Crore only) plus applicable taxes extra before completion of 14 months of effective date or 31st March 2023, whichever is earlier (the “**Upfront Fee**”) through online payment or Demand Draft issued by a Scheduled Commercial Bank as deemed suitable to the {Successful Bidder/Consortium} and the Authority hereby acknowledges the receipt thereof.

16.2 Minimum Guaranteed Annual Fee (MGAF)

The Minimum Guaranteed Annual Fee (MGAF) shall consist of Annual Fixed Revenue and the Annual Variable Revenue which shall be provided by the Operator to the Authority in accordance with the terms of the Agreement.

The Authority will raise an advance invoice clearly stating the Minimum Guaranteed Annual Fee on a quarterly basis and communicate the same to the Operator by way of a written demand. The Invoice amount shall be determined in accordance with Article 16.2.1 and 16.2.2 of this Agreement., The Authority shall raise the invoice for difference amount if any (or the adjusted amount) after the receipt of computation of Actual value of Variable Revenue for the Quarter upon reconciliation based on quarterly data available

16.2.1 Annual Fixed Revenue

16.2.1.1 In Consideration of the grant of right to operate & maintain, the Operator shall, commencing from the Effective Date till the end of Agreement Period, pay to the Authority, by way of Annual Fixed Revenue (the “**Annual Fixed Revenue**”):

- i. INR ‘0’ (Zero) for first two months i.e. Feb – March 2022 of 1st Financial Year
- ii. INR 6 Crore (Rupees Six Crore Only) for 2nd financial year (all applicable taxes extra) (for 1st April 2022 to 31st March 2023; and
- iii. INR 13.50 Crore (Rupees Thirteen Crore Fifty Lakhs Only) for 3rd Financial Year (all applicable taxes) (for 1st April 2023 to 31st March 2024).

The Annual Fixed Revenue shall be payable on quarterly basis.

16.2.1.2 The first payment of Annual Fixed Revenue shall be made on Effective Date and thereafter on or before 10th of first month of each financial quarter, till the end of Agreement Period. The Annual Fixed Revenue for further subsequent years shall be increased at 4% (four percent) p.a. compounded which shall be effective from 1st April 2024. The revised Annual Fixed Revenue shall be calculated as under:

$$B = A*(1+4\%)$$

Where,

“B” is the Annual amount payable for the current financial year; and

“A” is the Annual Amount for the previous year

16.2.1.3 Deleted.

16.2.1.4 The Annual Fixed Revenue shall be payable through apportioning from the ESCROW account in which the operator shall deposit the amount through online payment or Demand Draft issued by a Scheduled Commercial Bank as deemed suitable to the Operator.

16.2.2 Annual Variable Revenue

16.2.2.1 The Operator shall pay to the Authority Annual Variable Revenue of Rs. _____ per TEU (Rupees _____ only) plus applicable taxes (as quoted by the Operator in Financial bid and accepted by the Authority) subject to Minimum Guaranteed Throughput (MGT) of 15000 loaded TEUs per Quarter i.e. 60,000 TEUs per Year till March 2023. For the subsequent years after March 2023 till the end of agreement period; minimum 72,000 TEUs per Year will be considered.. The Annual Variable Revenue shall be payable on quarterly basis. Any decrease / increase in the actual volume of business (measured in terms of TEU) as compared to the Minimum Guaranteed Throughput (MGT) for a quarter shall be adjusted in the subsequent quarter of that respective financial year.

For avoidance of doubt it is clarified, there is no MGT requirement for the First Financial Year i.e., 1st February 2022 to 31st March 2022. Therefore, the Annual Variable Revenue shall be calculated as per the actual TEU Volumes; The ‘per TEU rate’ used for computing total Annual Variable Revenue shall be escalated at 4% p.a. compounded on YOY basis from 1st April 2023.

$$B = A*(1+4\%)$$

Where,

B is the ‘per TEU rate’ for the current financial year; and

A is the ‘per TEU rate’ for the previous financial year

16.2.2.2 On the basis of the verification of Quarterly Tariff Statement provided by the Operator duly certified by its Statutory Auditor in accordance with Article 20.2 of this Agreement, the Independent Consultant shall work out the variation in the amount paid by the Operator against the minimum Annual Variable Revenue and the actual Annual Variable Revenue payable by the Operator. The Operator on receipt of invoice from the Authority in accordance with this agreement shall pay such variation within 10 (ten) days from receipt of receipt of such demand.

For avoidance of doubt, at the end of the Quarter, the Operator shall submit a Quarterly Tariff Statement containing the TEUs Handled during the preceding Quarter duly certified by their Statutory Auditor within 7 (seven) days from end of the Quarter. The Independent Consultant shall verify the report and submit to the Authority the computation of additional demand on account of actual variable revenue (if any) within 7 (Seven) days from receipt of the Statement

of TEU Handled as submitted by the Operator; based on which the Authority shall raise invoice on the Operator. The Operator shall pay such amount of variation within 10 (Ten) days from the receipt of such a demand.

16.2.2.3 The Annual Variable Revenue shall be payable through apportioning from the ESCROW account in which the operator shall deposit either through online payment or Demand Draft issued by a Scheduled Commercial Bank as deemed suitable to the Operator.

16.2.3 Annual Escalation of Annual Fixed Revenue and Annual Variable Revenue

16.2.3.1 The escalation of the Annual Fixed Revenue and Annual Variable Revenue shall be on the basis of 4% per annum on compounded basis. The escalation is to be computed on the Annual Fixed Revenue and Annual Variable Revenue of the preceding year.

16.2.3.2 Deleted

16.2.3.3 For avoidance of doubt, if the Effective Date is 1st February 2022, the escalation in the Annual Variable Revenue would be applicable from 1st April 2023 and in Annual Fixed Revenue, it will be applicable from 1st April 2024. For Annual Variable Revenue, the Independent consultant shall compute the escalation for the FY 2023-24 which would be 4% on compounded basis, and arrive at variation amount if any for payment due for the first quarter of FY 2023-24 based on the escalated value of 'per TEU rate' which shall be valid for entire FY 2023-24. The Authority shall raise the demand in form of invoice, of difference amount and the Operator shall be required to make the payment within 10 (ten) days from the receipt of the demand.

16.3 Delay in payment of Consideration

In case of delay in payment of Consideration the Authority shall levy penal interest at the rate of 12% p.a. for number of days delay from due date till actual date of payment.

16.4 Set-off

16.4.1 The Operator shall not be entitled to retain or set-off any amount due to the Authority by it, all the such amount shall be paid to the Authority under this Agreement.

16.4.2 The amount certified by IC for payment towards Annual Fixed Revenue and Annual Variable Revenue shall be apportioned from Escrow account fully. If there is any dispute regarding such apportionment or any other payment / damages, the same shall be dealt with in accordance with the Dispute Resolution Procedure in Article 32.

ARTICLE 17. DELETED

ARTICLE 18. ESCROW ACCOUNT

18.1 Escrow Account

18.1.1 The Operator shall, open and establish an Escrow Account within 30 (thirty) days of the Signing of this Agreement with a scheduled commercial bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

18.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Operator, the Authority, the Escrow Bank, which shall be substantially in the form set forth in Schedule-G.

18.2 Deposits into Escrow Account

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

- (a) all monies received in relation to the Project from any source;
- (b) All funds and any other revenues from or in respect of the Project, including the proceeds of any ground rent, deposits, capital receipts or insurance claims etc.;
- (c) All payments by the Authority, after deduction of any outstanding payments.;
- (d) Termination Payment due and payable by the Operator to the Authority;

18.3 Withdrawals during Agreement Period

18.3.1 The Operator shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) All taxes/Statutory payment due and payable by the Authority for and in respect of the Project;
- (b) All taxes due and payable by the Operator for and in respect of the Project;
- (c) Any amounts due and payable to the Authority (including but not limited to the Quarterly payments against consideration and damages, penalties or interest, if any);
- (d) All payments and Damages certified by the Authority as due and payable to it by the Operator; and
- (e) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (f) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (g) Balance, if any, in accordance with the instructions of the Operator.

18.3.2 The Operator shall not in any manner modify the order of payment specified in Article 18.3.1, except with the prior written approval of the Authority.

18.4 Withdrawals upon Completion/Option to Exit/Termination

18.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Completion/ Option to Exit/ Termination, be appropriated in the following order:

- (a) All taxes due and payable by the Operator for and in respect of the Project;
- (b) Outstanding payments due to the Authority;
- (c) All payments and Damages certified by the Authority as due and payable to it by the Operator;
- (d) Incurred or accrued O&M Expenses;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 27.1
- (f) Any other payments required to be made under this Agreement; and
- (g) Balance, if any, in accordance with the instructions of the Operator:

Provided that no appropriations shall be made under Sub-Article (f) of this Article 18.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 26.

18.4.2 The provisions of this Article 18 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 18.4.1 have been discharged.

ARTICLE 19. INSURANCE

19.1 Insurance during Agreement Period

- 19.1.1. The Operator shall arrange, effect and maintain at its own cost, during the Agreement Period, shall arrange adequate insurance of the premises and all goods (including the value of goods including custom duties, charges etc. as applicable) which are held inside the Project Facility, against risk of fire, flood, riots and strike, malicious damage, theft, burglary, public liability and other such risks as may be guided by the requirement of the regulations in this regard.
- 19.1.2. The Operator shall arrange a transit insurance i.e. cargo/ container/stocks transported by it to protect the interest of users, Authority and customs duty.
- 19.1.3. In the event of any dispute going to court/tribunal/arbitration relating to insurance claim of stock/transit claim during transportation of cargo/container/stocks and claims of any other nature on account of handling within the premises, all expenses including legal fee etc. shall be borne by the Operator in accordance with the Article 30 of this Agreement

19.2 Insurance Cover

Without prejudice to the provisions contained in Article 19.1, the Operator shall, during the Agreement Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Operator, at replacement value;
- (b) Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) The Operator 's general liability arising out of the O & M Right;
- (d) Liability to third parties for goods or property damage;
- (e) Workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Operator and its employees or any insurance as maybe required under the customs regulations, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

19.3 Notices to the Authority

No later than 30 (Thirty) days prior to Effective date, as the case may be, the Operator shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 19. The Operator shall arrange, effect and maintain such other insurances as may be necessary pursuant hereto before the Effective date. In the event of any difference or disagreement relating to any such insurance, the decision of the authority shall be final.

19.4 Evidence of Insurance Cover

All insurances obtained by the Operator in accordance with this Article 19 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Operator shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Operator to the Authority.

19.5 Remedy for failure to insure

If the Operator shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Operator, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Operator.

19.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article 19 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

19.7 Operator's waiver

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

19.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator through appropriation from the Escrow Account and it shall notwithstanding anything to the contrary contained in this Agreement, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

19.9 Compliance with conditions of insurance policies

The Operator expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Operator's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

ARTICLE 20. ACCOUNTS AND AUDIT

20.1 Audited accounts

20.1.1 The Operator shall maintain books of accounts recording all its receipt (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2(two) copies of its Balance Sheet, and Profit and Loss Account, along with a report thereon by its Statutory Auditors (“**Statutory Auditor**”), within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such Audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have a right to inspect the Revenue records of the Operator during office hours and require copies of relevant extracts of books of accounts, duly certified and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

20.1.2 On or before the 61st day from the end of the each Financial Year, the Operator shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the people using the Project and liable for payment of Tariff thereof, (b) Tariff charged and received, realizable Tariff and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

20.2 Certification of claims by Statutory Auditors

Any claim or document provided by the Operator to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business except as otherwise specifically required under this Agreement.

20.3 Appointment of Statutory Auditor

20.3.1 The Operator shall appoint and have during the subsistence of this Agreement a Statutory Auditor. All fees and expenses of the Statutory Auditors shall be borne by the Operator.

20.3.2 The Operator may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Article 20.3.1.

ARTICLE 21. DELETED

This Page is intentionally left blank

Part IV Force Majeure and Completion/ Option to Exit/ Termination

This Page is intentionally left blank

ARTICLE 22. FORCE MAJEURE

22.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 22.2, 22.3 and 22.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

22.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Operator, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 22.3;
- (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (d) Closure and / or suspension of all major operations (as certified and recommended by the Independent Consultant) at the Jawaharlal Nehru Port
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

22.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the operation & maintenance of the Project to be financially unviable or otherwise not feasible;
- (c) any civil commotion, boycott or political agitation which prevents operation of the Project Facility by the Operator for an aggregate period exceeding 30 (thirty) days in a Calendar Year
- (d) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Operator to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) The Customs Authorities revokes or withdraws or suspends or denies the renewal of any Authorisation to the Authority for reason other than Change in Law or those attributable to the Operator;
- (g) Any Indirect Political Event that causes a Non-Political Event; or
- (h) Any event or circumstances of a nature analogous to any of the foregoing.

22.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law such as the enactment, repeal, modification of any Indian Law including the Customs Act, 1962 (as maybe amended from time to time) or a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding as compared to such interpretation or application by a court of record prior to the date of Bid, which leads to the revocation, withdrawal, modification, suspension of the Authorizations and beyond the control of the parties and cannot be dealt with under and in accordance with the provisions of Article 29;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Operator or of the Contractors;
- (c) Any event or circumstance of a nature analogous to any of the foregoing.

22.5 Duty to report Force Majeure Event

22.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. The Independent Consultant shall certify the occurrence of any such Force Majeure Event. However, the authority may at its own discretion

review / verify the certification of IC from other sources and take appropriate decision whether to consider the certificate of Force Majeure Event or not.. Any notice pursuant hereto shall include full particulars of:

- (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 22 with evidence in support thereof;
- (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event;
- (d) Any other information relevant to the Affected Party's claim.

22.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it has notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 22.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 Effect of Force Majeure Event on the O&M Right

22.6.1 Deleted

22.6.2 At any time after the Effective Date, if any Force Majeure Event occurs whereupon the Operator is unable to undertake its operations and collect the Tariff despite making best efforts or it is directed by the Authority or any Government Instrumentalities to suspend the business and or collection of Tariff thereof during the subsistence of such Force Majeure Event, the Agreement Period shall be extended by a period equal in length to the period during which the Operator was prevented from performance of its obligations as per this Agreement and collection of Tariff on account thereof; provided that in the event of reduction in Project services on account of partial suspension of services which cause the Minimum Guaranteed Annual Revenue to decline below [75% (seventy five per cent)] of the Average Minimum Guaranteed Annual Revenue for the corresponding period over the preceding [2 (two) years], the Authority shall extend the Agreement Period in proportion to the loss of such Minimum Guaranteed Annual Revenue due to Force Majeure.

Illustration for calculation of Extension in Agreement Period on occurrence of Force Majeure

Financial Year of Force Majeure (say)

2025-26

No. of TEUs for the FY 2025-26	40,000
No. of TEUs for the FY 2024-25	70,000
No. of TEUs for the FY 2023-24	80,000
Applicable Rate for FY 2023-24	A
Escalated rate for FY 2024-25	1.05 x A
Escalated rate for FY 2025-26	1.1025 x A
Minimum Guaranteed Annual Revenue for FY 2025-26	= Rs. 40,000 x 1.1025 x A
	= Rs 44,100 x A
Revenue for FY 2024-25	= Rs. 70,000 x 1.05 x A
	= Rs. 73,500 x A
Revenue for FY 2023-24	= Rs. 80,000 x A
Calculation of Average Annual Revenue for 2 Years preceding the Year of Force Majeure:	
=	(80,000 x A + 73,500 x A)/2
=	76,750 x A
MGAF for FY of Force Majeure as percentage of Average Annual Revenue of past 2 years:	
=	(44,100 x A)/ (76,750 x A) x 100
=	57.46 %
Decline in MGAF below 75% of Average Annual Revenue:	
=	75% - 57.46 %
=	17.54%
Assuming, 100% of Average Annual Revenue for 2 preceding years be the MGAF for the Force Majeure Year in normal circumstances, then the time required to make up for 17.54% of Average Revenue will be,	
=	17.54 % / 100% x 365
=	64.021 or 64 days

22.7 Allocation of costs arising out of Force Majeure

22.7.1 Upon occurrence of any Force Majeure Event, the costs incurred by each party and attributable to such event and directly relating to the Project Assets and Project Facilities (the "Force Majeure Costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Force majeure Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any amounts thereof;
- (b) all costs incurred by each party and attributable to such event should be certified by the Independent Consultant.

22.7.2 Save and except as expressly provided in this Article, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands

and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of [180 (one hundred and eighty)] days or more within a continuous period of [365 (three hundred and sixty five)] days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant [30 (thirty)] days' time to the other Party to make a representation and may after the expiry of such [30 (thirty)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.9 DELETED

22.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as prescribed in Article 32 of this Agreement; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

22.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 23. DELETED

ARTICLE 24. DELETED

ARTICLE 25. TERMINATION

25.1 Termination for Operator Default

25.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within 90 (ninety) days (except last year when cure period shall be 30 days), the Operator shall be deemed to be in default of this Agreement (the “**Operator Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) Customs Authorities initiates any proceedings for the revocation, withdrawal or suspension of any authorisation for the reason of any act or omission attributable to the Operator or denies the renewal of any authorisation due to Operators default;
- (b) the Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (c) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.2, the Operator fails to cure the Operator Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (Ninety) days;
- (d) the Operator abandons or manifests intention to abandon the Project without the prior written consent of the Authority;
- (e) the Operator is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Operator fails to rectify the deficiencies identified by the Independent Consultant in its O & M Inspection Report within the stipulated time frame as per this Agreement;
- (g) the Operator has failed to make any payment to the Authority within the period specified in this Agreement and remains in default for a period of 90 (ninety) days from the due date of payment;
- (h) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Operator fails to cure the default within the Cure Period specified hereinabove;
- (i) a breach of any of the Project Agreements by the Operator has caused a Material Adverse Effect;
- (j) the Operator creates any Encumbrance, charges or lien in breach of this Agreement and in respect of the PROJECT Facilities in favour of any person without any concurrence with the Authority;

- (k) the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) an Escrow Default has occurred and the Operator fails to cure the default within a Cure Period of 15 (fifteen) days;
- (m) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- (n) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- (o) an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;
- (p) the Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the Project;
- (q) the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (r) a resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Operator under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Operator as at the Effective Date; and
 - (iii) Each of the Project Agreements remains in full force and effect;
- (s) any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Operator is at any time hereafter found to be in breach thereof;
- (t) the Operator submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- (u) the Operator has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (v) the Operator issues a Termination Notice in violation of this Agreement; and
- (w) the Operator commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

25.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of Operator Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator ; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 30 (Thirty) days to the Operator to make a representation, and may after the expiry of such 30 (Thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Article 25.3.3.

25.2 Termination for Authority Default

25.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or any such longer period as expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Operator or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Operator; or
- (b) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

25.2.2 Without prejudice to any other rights or remedies which the Operator may have under this Agreement, upon occurrence of an Authority Default, the Operator shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Operator shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (Thirty) days to the Authority to make a representation, and may after the expiry of such 30 (Thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

25.3 Termination Payment

25.3.1 Termination Payment on account of Operator’s Default:

- (a.) Upon Termination on account of Operator’s Default during the Agreement Period, the Authority shall be entitled to encash the Performance Security as submitted by the Operator. The Operator shall be responsible to make payment of all outstanding dues towards the Authority as well as Statutory dues, Taxes etc.

- (b.) The Authority shall not make any payment to the Operator in case of Termination due to Operator's Default.

25.3.2 Termination Payment on account of Authority's Default

25.3.2.1 Termination due to Authority's default after the Agreement Date but prior to Effective Date:

In the event of Authority Default after signing of agreement but prior to Effective date, the authority shall refund entire upfront fees along with return of performance security to the operator without any interest and any claim

25.3.2.2 Termination due to Authority's default after the Effective Date:

- (a.) the authority shall return the performance security of operator after deducting the dues towards the Authority as well as statutory dues if any

(b.) Termination Payment towards Upfront Fees paid at the time of signing of Agreement :

In case of an Authority Default within 5 years of Effective date, the Authority shall refund a part of upfront fee in proportion to the remainder number of months within the period of 5 years. Such an amount shall be calculated as under:

Refund of Upfront Fees = (Total Upfront Fee x remainder No. of months in the period of 5 years) / 60 months)

Illustration :

The upfront fee is Rs 10 Cr. If the agreement is terminated after 3 years, then remainder period is 2 years i.e. 24 months; and the refund of upfront fees on Authority's default shall be

$$\text{Refund (Rs)} = \text{Rs } 10 \text{ Cr} \times (24 / 60) = \text{Rs } 4 \text{ Cr.}$$

In the event the dues towards the authority exceeds the Performance Security, the same shall be adjusted from the part of Upfront Fees due and payable to the Operator on account of termination before 5 years.

No payment towards upfront fees shall be made to the Operator if such a termination due to Authority's default occurs after 5 years from Effective Date.

(c.) Termination payment towards New Asset Created

In case of termination due to authority's default, the termination payment on account of New Asset created shall be made by the authority to the operator in addition to a) and b) above, as per following conditions:

- (i) Only the permanent building structures, embedded to the ground and immovable in nature shall be considered for computation of such additional termination payment. Any movable asset, pre-fabricated structure, machinery etc. shall not be considered for such computation.
- (ii) The total built up area of newly constructed should be more than the total built up area of the demolished / deconstructed area. Only the additional area constructed as per approvals (built up area over and above the area demolished) shall be considered for computation of termination payment.
- (iii) The cost of such an additional area shall be provided by the Operator to the Authority and Independent Consultant (IC) at the time of construction with Detailed Project Report. IC shall certify the cost based on available documents as well as verification of reasonability of such DPR / documents like contract awarded for such construction etc.
- (iv) The Authority will refund the amount equal to Depreciated value of such an asset / building as per Companies Act 2013 (as may be amended time to time).
- (v) The part of the new construction upon demolition can be done in phase wise manner.

Illustration:

Particulars	Amount / Value assumed
The area of part building demolished	3000 sq. m.
The area of new construction	4000 sq. m.
Additional area constructed	1000 sq. m
Assuming : Cost certified by Independent Consultant for additional area of 1000 sq. m upon achievement of Completion Certificate	Say approx. Rs 2.5 Cr
Assumed Depreciation percentage (Note. Actual Depreciation percentage shall be taken as per provisions of Companies Act, 2013 as amended from time to time)	Say 1.67% p.a.(Assumed)
Assuming termination due to Authority's default happens after 8 years	
Accumulated depreciation	=2.5 Cr * 1.67% * 8 = Rs 33.4 Lakh
Depreciated Value at the end of 8 years (to be certified by IC)	Rs 2.17 Cr
Hence, amount of termination payment in case of Authority's default	Rs 2.17 Cr

In the event the dues towards the authority exceeds the Performance Security, the same shall be adjusted from the a) part of the Upfront Fees due and payable to the Operator if the termination happens before 5 years as well as from Termination Payment on account of Asset created OR b) Termination payment on account of Asset created if such a Termination due to Authority's default occurs after 5 years ; .

25.3.3 **Note :** The above modality of termination payment (on account of Authority's default) as per Depreciated Value of additional asset (permanent structures) created by the Operator, shall be applicable for such additional asset created within the limitations of the FAR permissible currently. In future, if the permissible FAR is increased by CIDCO, then the modality of termination payment of such an additional asset created beyond the permissible Built up area as per current FAR, shall be decided by the authority at its own discretion. The Operator shall bear the same in mind while preparing such plans for additional construction. In case of such a change in permissible FAR or other bylaws or Development Control Regulations which affect the Project Site, the Authority and Operator may arrive at a mutual agreement on such issues through a 'Supplementary Agreement' prior to creation of such an asset going beyond the currently permissible FAR built up area.

25.3.4 Termination Payment (in case of Authority's default) shall become due and payable to the Operator within 90 (Ninety) days of a demand being made by the Operator to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at One Year MCLR Rate of State Bank of India (SBI) (prevailing on the date of release of such amount) on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

25.3.5 The Operator expressly agrees that Termination Payment under this Article 25 shall constitute a full and final settlement of all claims of the Operator on account of Termination of this Agreement for any reason whatsoever and that the Operator shall not have any further right on the Project Facility or claim against Authority under any law, treaty, convention, contract or otherwise.

25.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) Be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Site or any part of the Project;
- (d) Require the Operator to comply with the Divestment Requirements set forth in Article 26.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Operator, to the interests of the Operator under such of the Project Agreements as

the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Operator . For the avoidance of doubt, the Operator acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Operator and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

ARTICLE 26. DIVESTMENT OF RIGHTS AND INTEREST

26.1 Divestment Requirements

26.1.1 Upon the successful completion of the Agreement Period by efflux of time or in case of exercise of option to exit this Agreement or Termination, the Operator shall comply with and conform to the following divestment requirements (the “**Divestment Requirements**”), not earlier than 6 (six) months but not later than [30 (thirty)] days prior to the such Completion, Exit or Termination of the Agreement Period:

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets existing and newly created for the operations of the Project;
- (b) cure all defects in the Project Assets as intimated by the Independent Consultant in accordance with Article 12, so that the Project is compliant with the Maintenance Requirements ; provided that in the event of Completion, Exit or Termination during the Agreement Period, all Project Assets shall be handed over in the good condition to the Authority;
- (c) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement, to the Authority;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project, to the Authority.
- (e) In case of new assets, its design, engineering, construction, operation and maintenance, including all programs and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date.

For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;

- (f) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project Assets, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (h) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

26.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Operator, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

26.1.3 The Divestment Requirements as mentioned in the Clause 26.1.1 above which will occur due to exercise of right to exit the Agreement by the Operator shall be applicable only if the Operator had by way of a written notice, inform to the Authority about its intent to exercise such right to exit, at least one year in advance.

26.2 Inspection and cure

Not later than 365 (Three hundred and Sixty five) days (one year) prior to the transfer date arising out of such Completion/Option to Exit/Termination, the Independent Consultant shall verify, after giving due notice to the Operator specifying the time, date and place of such verification and/or inspection, compliance by the Operator with the Repairs and Maintenance Requirements, if any as indicated by the Independent Consultant within the specified period. Defaults, if any, in the Maintenance Requirements shall be cured by the Operator at its cost and the provisions of Article 27 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 26.

Failure to cure default by the Operator shall entitle the Authority to encash the Performance Security in accordance with Article 9.3 of this Agreement.

26.3 Transfer of Project

26.3.1 The Operator shall provide to the Authority, 6 (six) months prior to the Transfer Date in the event of Termination, or completion by efflux of time or exit, as the case maybe and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Operator shall further provide such reasonable advice and assistance to the Authority, its Operator or agent as may be reasonably required for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

26.3.2 Upon Completion of the agreement period by efflux of time or way of exercise of option to exit by the Operator or termination, the permanent structures created by the Operator, shall vest with the Authority and the Operator shall have no right on any such permanent / immovable structures as so created/ constructed by him. Moreover, at the time of handing over/ transfer of the Project Facility after the completion of the agreement period by efflux of time / exercise of exit option/ termination, the Operator shall ensure that the assets are handed over back to the Authority as per the Inventory List in the good condition.

26.3.3 Upon termination of the agreement – either by Operator’s default or Authority’s default, the permanent structures created by the Operator, shall vest with the Authority and the Operator shall have no right on any such permanent / immovable structures as so created/ constructed by him. Moreover, at the time of handing over after termination, all the assets and inventory

which were handed over to the operator at the time of start of the project on Effective date, shall be returned by the Operator in good condition to the Authority.

26.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-H (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Operator of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Operator.

26.5 Divestment costs etc.

26.5.1 The Operator shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Operator in the Project Assets in favour of the Authority upon Completion/Option to Exit/Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Operator in connection with such Divestment shall be borne by the Authority.

26.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

26.6 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, any Completion/ Option to Exit/ Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Divestment Requirements, shall survive the Completion/ Option to Exit/ Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 27. DEFECTS LIABILITY AFTER COMPLETION/ EXIT/TERMINATION

27.1 Liability for defects after Completion/Option to Exit/Termination

The Operator shall be responsible for all defects and deficiencies in the Project for a period of 1 (one) year after Completion/Option to Exit/Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Consultant in the Project upto the transfer date. In the event that the Operator fails to repair or rectify such defect or deficiency within a period as specified by the Independent Consultant, the Authority shall be entitled to get the same repaired or rectified at the Operator's risk and cost so as to make the Project conform to the Maintenance Requirements. The Authority shall apportionate the costs incurred for such repairs from the Escrow Account. The Authority shall be entitled to invoke the Performance Security.

27.2 Retention of Gross Revenue

27.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 27.2.3, a sum equal to the Minimum Guaranteed Annual Fee (MGAF) during the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of [1 (one)] year after Transfer date for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 27.1.

27.2.2 Without prejudice to the provisions of Article 27.2.1, the Independent Consultant shall carry out an inspection of the Project Assets and Project Facilities at any time between [365 (three hundred and sixty five)] and [335 (three hundred and thirty five)] days prior to the proposed Transfer date and if it recommends that the status of the Project Assets and Project Facilities is such that the sum larger than the amount stipulated in Article 27.2.1 should be retained in Escrow Account and for a period longer than the aforesaid [i.e1 (one) year], such an amount shall be retained in the Escrow Account for the period specified by it.

27.2.3 The Operator may, for the performance of its obligations under this Article 27, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Article 27.2.1 or Article 27.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule D (the "**Performance Security**"), to be modified, *mutatis-mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Operator's risk and cost in accordance with the provisions of this Article 27. Upon furnishing of the Performance Guarantee under this Article 27.2.3, the retention of funds in Escrow Agreement in terms of Article 27.2.1 or 27.2.2, as the case may be, shall be dispensed with.

Part V Other Provisions

This Page is intentionally left blank

ARTICLE 28. ASSIGNMENT AND CHARGES

28.1 Restrictions on assignment and charges

28.1.1 Subject to Articles 28.2 and 28.3, this Agreement shall not be assigned by the Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.1.2 Subject to the provisions of Article 28.2, the Operator shall not create nor permit to subsist any Encumbrance.

28.2 Permitted assignment and charges

The restraints set forth in Article 28.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Law;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project; and
- (c) assignment of rights, interest and obligations of the Operator to or in favour of the Lenders' Representative as nominee and for the benefit the Senior Lenders, to the extent covered by an in accordance with the Substitution Agreement as security for financing provided by the Senior Lenders under the Financing Agreements.

28.3 Substitution Agreement

28.3.1 Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Operator pursuant to the agreement for substitution of the Operator (the "Substitution Agreement") to be entered into amongst the Operator, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule I.

28.3.2 Upon substitution of the Operator under and in accordance with the Substitution Agreement, the Nominated Company substituting the Operator shall be deemed to be the Operator under this Agreement and shall enjoy all rights and be responsible for all obligations of the Operator under this Agreement as if it were the Operator; provided that where the Operator is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of [90 (Ninety)] days (or as specified by the authority except last year when cure period shall be 30 days) to the Operator for curing such breach.

28.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Operator, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 29. CHANGE IN LAW

29.1 Deleted

29.2 No claim in the event of recovery from users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Operator any sums on account of a Change in Law.

29.3 No claim in the event of change in tax regulations and developmental control regulations

Notwithstanding anything to the contrary contained in this Agreement, it is hereby clarified, that the Authority shall not in any manner be liable to reimburse to the Operator any sums on account of a change in taxation regulations/rates of any taxes and any change in developmental control regulations for both land use and building regulations and the same shall not constitute a Change in Law for the purposes of this Agreement.

29.4 Restriction on cash compensation

The Parties acknowledge and agree that there shall be NO demand for cash compensation under this Article due to the effect of Change in Law during the respective Accounting Year.

ARTICLE 30. LIABILITY AND INDEMNITY

30.1 General indemnity

30.1.1 The Operator shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Operator to the Authority or to **Authority Indemnified persons**, or from any act or omission of the Operator arising out of negligence, fraud or wilful misconduct resulting in harm, loss, damage, bodily injury or sickness to a person or harm, loss, damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to such act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

30.1.2 The Authority shall indemnify, defend, save and hold harmless the Operator against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatsoever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Operator of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement, and/or breach of its statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Operator. For avoidance of doubt any Liabilities which arose due to negligence in the obligations of the existing operator shall not affect the existing Operator in this agreement.

30.2 Indemnity by the Operator

30.2.1 Without limiting the generality of Article 30.1, the Operator shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Operator to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator’s contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Operator by its contractors/vendors which are payable by the Operator or any of its contractors.
- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;

- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

30.2.2 Without limiting the generality of the provisions of this Article 30, the Operator shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator 's Contractors in performing the Operator 's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Operator is unable to secure such license within a reasonable time, the Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

30.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 30 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand. The indemnifying Party shall contest or dispute the claim or demand, in the name of the Indemnified Party, if required by virtue of any order, summon, notice etc., subject to the Indemnified Party being secured against any associated costs involved, to its reasonable satisfaction.

30.4 Defence of claims

30.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 30, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses

incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence.

30.4.2 Appointment of Counsel and associated costs

- I. The Indemnifying Party shall contest or dispute the claim or demand in the name of the Indemnified Party under Article 30.3 however, the Indemnified Party may employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party when and as incurred in the following circumstances:;
 - (a) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (b) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- II. The Indemnified Party shall recover the costs associated with such appointment of Counsel from the Indemnifying Party, where it has reasonably concluded as under :
 - a) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - b) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-Articles I(a), (b) or II (a) and (b) of this Article 30.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party.

30.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 30, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

30.6 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed the MGAF except where amounts exceeding the MGAF are specifically prescribed in this Agreement as Termination Payment The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Operator's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Operator;

- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

30.7 Survival on Completion/ Option to Exit/ Termination

The provisions of this Article 30 shall survive Completion/ Option to Exit/ Termination.

ARTICLE 31. RIGHTS AND TITLE OVER THE SITE

31.1 Operation & Maintenance rights

For the purpose of this Agreement, the Operator shall have rights to the use of the Project Site for Operation and Maintenance (O&M) subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

31.2 Access rights of the Authority and others

31.2.1 The Operator shall allow free access to the Project Site at all times for the Authority representatives, and the Independent Consultant, and for the persons duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions. The operator shall also allow access to the persons from mobile tower agency or any other, for repairs and maintenance of the mobile tower installed over the administrative building.

31.2.2 The Operator shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Project Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

31.3 Property taxes

All property taxes on the Project Site shall be payable by the Authority as owner of the Project Site; provided, however, that any such taxes payable by the Operator under Applicable Laws for use of the Project Site shall not be reimbursed or payable by the Authority.

31.4 Restriction on sub-contracting for operations

The Operator shall not transfer their Operation & Maintenance Rights for the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Operator to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 32. DISPUTE RESOLUTION

32.1 Dispute resolution

32.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.

32.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

32.2 Adjudication

32.2.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 32.1, within 60 (sixty) days shall be submitted for adjudication before Punjab Infrastructure Regulatory Authority having its office at Forest Complex Tower 5, 5th Floor, Mohali established under section 4 of Punjab Infrastructure (Development and Regulation) Act, 2002, in accordance with the Applicable Laws and all reference to Dispute Resolution shall be construed accordingly.

32.2.2 The Punjab Infrastructure Regulatory Authority shall make a reasoned award (the "Award"). Any Award made by Punjab Infrastructure Regulatory Authority pursuant to this Article 32 shall be final and binding on the Parties as from the date it is made, and the Operator and the Authority agree and undertake to carry out all such acts in order to implement such Award without delay.

32.2.3 The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.

32.2.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

32.3 Arbitration

32.3.1 In the event, when PIRA is not constituted the Parties may make by reference to arbitration by a Tribunal consisting of three Arbitrator, appointed pursuant to Article 32.2.2 below. Such arbitration shall be held in accordance with the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto.

32.3.2 Both parties shall nominate one arbitrator each and the two nominated arbitrators shall appoint the third Presiding Arbitrator.

32.3.3 The arbitrator shall issue a reasoned Award.

32.3.4 The venue of such arbitration shall be Chandigarh, India.

32.3.5 The Operator and Authority undertake to carry out any decision or award of the arbitrator (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

32.3.6 The Operator and Authority agree that an Award may be enforced against the Operator and/or Authority, as the case may be and their respective assets wherever situated.

32.4 Costs associated with Dispute Resolution

32.4.1 The Cost incurred on Adjudication including inter alia, the cost of Regulatory Authority proceedings shall be borne by the parties in equal proportions.

32.4.2 Each party shall bear its own legal fees incurred as a result of Dispute.

32.5 Performance during Dispute

32.5.1 Performance of this Agreement shall continue during the settlement of any Dispute under this Article 32. The Provision of this Dispute Resolution Procedure shall be binding on successors, assigns, and any trustees, or receivers of either Authority or the Operator.

ARTICLE 33. DISCLOSURE

33.1 Disclosure of Specified Documents

The Operator shall make available for inspection by Authority Representatives and Independent Consultant or relevant Government Instrumentalities, copies of this Operation & Maintenance Agreement, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Site and the Operator’s Registered Office. The Operator shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis. The operator shall also provide access to the Authority or its Authorized Representative to the software installed by him as per provisions in Article 5.1.6 of this agreement, which captures the entire volume of business, the containers coming in, the containers going out with description of their weight and volume and description of goods, conversion to equivalent tons and equivalent TEUs.

33.2 Disclosure of Documents relating to safety

The Operator shall make available for inspection by Authority Representatives and Independent Consultant or relevant Government Instrumentalities copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Operator’s Registered Office. The Operator shall make copies of the same available to Authority Representatives and Independent Consultant or relevant Government Instrumentalities upon payment of copying charges on a ‘no profit no loss’ basis.

33.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Articles 33.1 and 33.2, the Authority shall be entitled to direct the Operator, to withhold the disclosure of Protected Documents (as defined herein below) to Authority Representatives and Independent Consultant or relevant Government Instrumentalities in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 33.1 and 33.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 34. DELETED

ARTICLE 35. MISCELLANEOUS

35.1 Governing law and jurisdiction

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

35.2 Deleted

35.3 Depreciation and Interest

Only for the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Operator in the Project shall be deemed to be acquired and owned by the Operator during the Agreement Period.

35.4 Delayed payments

35.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made from escrow account within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 18%p.a. (eighteen percent) till the actual date of payment and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

35.5 DELETED

35.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement

- (a) no review, comment or approval by the Authority or the Independent Consultant of any Project Agreement, Document or Drawing submitted by the Operator nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) The Authority shall not be liable to the Operator by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

35.7 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

35.8 Survival

35.8.1 Completion/Option to Exit/Termination shall:

- (a) Not relieve the Operator or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Completion/Option to Exit/Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Completion/Option to Exit/Termination or arising out of such Completion/ Option to Exit/ Termination.

35.8.2 All obligations surviving Completion/Option to Exit /Termination shall only survive for a period of 3 (three) years following the date of such Completion/Option to Exit/ Termination except that any court cases shall remain the liability of the operator till the final decision.

35.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Operator arising from the Bid documents, as the case may be, shall be deemed to form part of this Agreement and treated as such.

35.10 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

35.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

35.12 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Operator's Contractor.

35.13 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns as per Article 28.

35.14 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Operator , be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the Chandigarh may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Operator may from time to time designate by notice to the Authority.

{Attention:

Designation:

Address:

Fax No:

Email;}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in the Chandigarh it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name:

Designation:

Address:

Fax No:

Email:}; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it

ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

35.15 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

35.16 Confidentiality

- (a) Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.
- (b) Sub-Clause (a) above shall not apply in the following circumstances:
 - (i) any disclosure required by Applicable Laws or in respect of information already in the public domain;
 - (ii) any disclosure required by any applicable stock exchange listing rule; and
 - (iii) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.
- (c) Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.
- (d) In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.
- (e) Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.
- (f) Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive [3 (three) years] from Completion/ Option to Exit/ Termination.

35.17 Stamp Duty

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Operator.

35.18 Counterparts

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>	<p>THE COMMON SEAL OF OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the ___ day of _____ 20__ hereunto affixed in the presence of:</p> <p>_____ Director, who has signed these presents in token thereof; and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>
<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE SUCCESSFUL BIDDER/ LEAD MEMBER OF THE CONSORTIUM by:</p> <p>(Signature) (Designation) (Name) (Address) (Fax No.) (e-mail)</p>	<p>In the presence of:</p> <p>1. _____, Director</p> <p>2. _____, Company Secretary</p>

SCHHEDEULES

This Page is intentionally left blank

SCHEDULE A. DETAILS OF SITE & ASSETS -



Site Details:

- Site Location: CIDCO Warehousing zone, Dronagiri (Near JNPT), Navi Mumbai
- Address : Plot no. 2, Sector 2A. Dronagiri, Nhava Sheva (Taluka Uran, District Raigad), Maharashtra State - 400707
- Site Area: 107748.921 sq. m. (26.6178 acres say approx.. 26.62 acres)
- Buildings Area:
 - Covered Warehouses (2 nos.; G+1): 47465 sq. m. (Total)
 - Office Building (G+4): 4060 sq. m.
 - Other bldgs. (Token office, Gate site, others): 912 sq. m.
- Open Yard (Container yard + Roads): 52700 sq. m.
-
- The site is located at a distance of 11 kms from the port area and all the port facilities are within 19 km from CFS and its connected to NSICT, JNPT, GTI terminals.

Site Plans

The site plan is presented below after the site description:

Site : Piece of Parcel of land known as Plot No. 2 in Sector no. 2 of Dronagiri node, Nhava Sheva, Taluka Uran, District Raigad, Maharashtra containing by admeasurement 107748.921 sq. m. or thereabout and bounded as follows that is to say :

- On or towards the North by 20 mtrs wide Chanel
- On or towards the East by 20 mtrs wide road
- On or towards the South by 20 Mtrs wide road
- On or towards the west by 20 Mtrs wide road

SCHEDULE B. SCOPE OF THE PROJECT

City Industrial Development Corporation (CIDCO), Government of Maharashtra, has provided of the plot land located at plot no. 2, Sector 2, Dronagiri node, Nhava Sheva (Taluka Uran, District Raigad), Maharashtra state to Punjab Container and Warehousing Corporation (CONWARE) on a 60 years lease w.e.f. 15.12.1994 to develop a Container Freight Station (CFS).

The site is located at a distance of approx. 11 kms from the port area and all the port facilities are within 19 km from Conware CFS and is in proximity to Nhava Sheva International Container Terminal (NSICT), Jawaharlal Nehru Port Trust (JNPT), Gateway Terminals India Pvt. Ltd. (GTI) terminals. This provides it a locational advantage to most of the other CFS that are operational in this area. Moreover, there are roads on 3 sides of the plot which adds to the attractiveness of the site.

The Container Freight Station (CFS) of Conware is multimodal warehousing facility providing logistics support and array of off-dock services to export/import (EXIM) containerized trade. The facility covers 107,748.92 sq. m. approx. details of which is enclosed as per Schedule A Details of Site and Assets.

List of the existing facilities that are provided by the current operator are as follows. The List is an indicative list and is not exhaustive:

1. Export Oriented Services
 - Ground Rent Charges for Containers
 - Storage of Cargo Charges
 - Loading of Cargo to Customs Area
 - Loading of Trucks for Transportation
 - Providing labour and machinery for Custom inspection of container
2. Import Operations
 - Cargo Handling for transporting cargo into trucks
 - Transportation from JNPT to CFS
 - Aggregating and Disaggregating Imported Containers
 - Ground Rent Charges
 - Storage Charges
3. Custom Bonded Warehouse
 - Storage in Warehouse
 - Unloading and staking of Cargo
 - Transportation from another warehouse to Custom Warehouse
 - Lifting containers at bonded warehouse
 - Lifting empty containers
4. Transport and Transit Services
 - Transportation of containers to/from Ports
 - Full Container Load (FCL) delivery
 - First and Last Mile Connectivity through own fleet of trailers
 - Tracking of Containers using RFID and SMS facility

SCOPE FOR THE OPERATOR

The Operator shall carry out operation & maintenance of existing PROJECT Facilities. It is clarified herewith that in addition to the above-stated "Scope of Work", the Operator shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Operation & Maintenance Agreement, the Schedules to the Operation & Maintenance Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the development of the Project.

The Authority shall hand over the entire PROJECT facilities in the good condition to the Operator.

The Operator shall at all times, be required to adhere to the scope of work mentioned hereunder:

- The Operator shall fulfill all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Operation & Maintenance Agreement and its Schedules thereof in accordance with the Permitted Activities defined under Article 3.1.3 of this Agreement.
- Operation and maintenance of entire facilities including warehousing facilities; third party logistics; bonded warehouse facilities; survey and inspection of containers; repair yard for equipment and other related equipment; any other container handling and transportation service.
- Marketing of facilities, handling the import and export cargo including stuffing/ De-stuffing delivery of containers;
- Upkeep of the entire building during entire Agreement Period;
- Keeping proper record of TEUs and providing access to authority through IT enabled solution as per Article 5.1.6.
- any other related activities which are normally conducted at any fumigation of container/cargo; and
- performance and fulfilment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.
- The operator shall have right to undertake Refurbishment/ modification of the premises, anytime during the Agreement Period with prior approval of the Authority, after ensuring the adherence with Schedule N, Rules of Town Planning, Development Control Regulations of CIDCO, local applicable byelaws and any other pertinent regulations and after the approval of competent authority

SCHEDULE C. APPLICABLE PERMITS

The Operator shall obtain, as required under the Applicable Laws, the following Applicable Permits / No's/ Clearances from necessary agencies / authorities on or before the Effective Date, save and except to the extent of a waiver granted by the Authority in accordance with the conditions defined in the Letter of Award. The Operator shall adhere to norms set out by those agencies/ Authorities with regards to implementation of the Project.

The current CCSP license is until 2025. The license is in Punjab Conware name. All the necessary licenses have been obtained in the Name of Punjab Conware.

If the Operator needs additional licenses for specialized cargo, then can apply in the name of Punjab Conware and make payments for that, however the license would be in the name of Punjab Conware. The Authority shall extend administrative support in this regard and shall facilitate the assistance to the Operator for getting approval/clearance from the agencies/ Authorities. The cost of the procurement of the additional licenses shall be borne by the Operator. If, however, the License requires ONLY the Authority to make the payment, the Authority shall make the payment and appropriate the same from the Escrow Account.

Some of the licenses list are as listed below.

- Permissions from Maharashtra Pollution Control Board
- Consent to operate granted by MPCB (currently valid up to 31.01.2031).
- Permission Customs for handling of Hazardous Cargo (Permission granted by Customs every 2 years period).
- CCSP permission: Commissioner of Customs, JNCH Notified the CFS Plot 2 vide notification no. 02/1999 & the same are renewed from time as a CCSP every 5 years. (Current permission was issued on 15.03.2020 and the same is valid till 15.03.2025).
- Bonded Warehouse license issued regular till Customs change notification.
- Labour license is to be renewed every year from Jan to Dec. (Currently valid till Dec'2021)
- Shop establishment license: The receipt has been given as per Rule 9 that less than 10 employees there is no need to register under Rule B this is for Authority establishment. The operator present has been separately registered with shop establishment & they are renewing their license every 3 years.
- Exemption to pay customs cost recovery: Exempted by Govt. of India, Ministry of Finance, Dept. of Revenue vide Circular dtd. 17/23rdMay' 2006
- Exemption from BG to be given to Customs

The above-mentioned list of Applicable Permits is not exhaustive.

SCHEDULE D. PERFORMANCE SECURITY

(See Article 9.1)

The Managing Director,
Punjab State Container and Warehousing Corporation Limited (Conware)
S.C.O., 74-75, Bank Square, Sector 17-B,
Chandigarh-160017

WHEREAS:

- (A.) _____ (the “Operator”) and _____, Punjab State Container and Warehousing Corporation Limited (CONWARE) (the “Authority”) have entered into an Operation & Maintenance Agreement dated _____ (the “Agreement”) whereby the Authority has agreed to the Operator undertaking Operation & Maintenance and refurbishment if any of Container Freight Station (CFS) Facilities at Dronagiri Node, Plot No. 2, Sector 2, Navi Mumbai, NhavaSheva, Maharashtra (the “Project”), subject to and in accordance with the provisions of the Agreement.
- (B.) The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of Rs. _____ (Rupees _____ only) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Agreement Period (as defined in the Agreement).
- (C.) We, _____ through our Branch at _____ (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator ’s obligations during the Agreement Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator , such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Managing Director in the Punjab State Container and Warehousing Corporation Limited., that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Agreement Period under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and

the Operator , or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator , and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the Effective Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect on Effective Date upon submission of Operations Performance Security by the Operator.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly

authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for the entire Agreement Period.
12. This guarantee shall also be operatable at our _____branch at Chandigarh, from whom, confirmation regarding the issue of this guarantee or extension/ renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
13. The guarantor/ bank hereby confirms that it is on the SFMS (Structural Finance Messaging System) platform & shall invariably send an advice of this Bank Guarantee to the designated bank of Punjab State Container and Warehousing Corporation Limited. The details are as following:
 1. Name of Beneficiary
 2. Name of Bank
 3. Address of Bank Branch
 4. Account No.
 5. IFSC Code

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE E. MAINTENANCE REQUIREMENT

(See Article 12.2)

1. Maintenance Requirements

- 1.1 The Operator shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Operator shall, at all times during the Agreement Period, conform to the maintenance requirements set forth in this Schedule-E (the “**Maintenance Requirements**”).
- 1.2 The Operator shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-E within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Article 12.5 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Completion/ Option to Exit/ Termination thereof.

2. Repair/rectification of defects and deficiencies

- 1.1 The obligations of the Operator in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified time to time by the Authority and the Independent Consultant within the time limit set forth therein.

3. Other defects and deficiencies

In respect of any defect or deficiency not specified in this Schedule-E, the Operator shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Consultant.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-E, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Operator shall be entitled to additional time in conformity the Good Industry Practice. Such additional time shall be determined by the Independent Consultant and conveyed to the Operator and after permission from the Authority with reasons thereof.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-E, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Operator shall promptly take all reasonable measures for eliminating or minimizing such danger.

6. Divestment Requirements

All defects and deficiencies specified by the Independent Consultant shall be repaired and rectified by the Operator so that the Project conforms to the Maintenance Requirements on the Transfer Date.

Annex - I (Schedule-E) Repair/Rectification of Defects and Deficiencies

(To be listed out based on the repairs and refurbishment plan of the Operator in consultation with the Authority and the Independent Consultant)

Operations and Maintenance Standards and Requirements

Operation Planning Principles

SCHEDULE F. SAFETY REQUIREMENTS

(See Article 13.1.1)

1. Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with management of the users of the facility.

2. Obligations of the Operator

The Operator shall abide by the following in so far as they relate to safety of the Users:

- (a) Provisions of this Agreement; and
- (b) Good Industry Practice.
- (c) Applicable Laws and Applicable Permits;
- (d) Relevant Standards/Guidelines.

SCHEDULE G. ESCROW AGREEMENT

(See Article 18.1.1)

THIS ESCROW AGREEMENT is entered into on this the day of 20____

AMONGST

1. _____(the “Operator ”) a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “Operator ” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
3. Punjab State Container and Warehousing Corporation Limited (Conware), represented by_____ and having its principal office at _____ (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A.) The Authority has entered into Operation and Maintenance Agreement dated _____with the Operator (the “Operation and Maintenance Agreement”) for Operation and maintenance of Container Freight Station (CFS) at Dronagiri Node, Plot No. 2, Sector 2, Navi Mumbai, Nhava Sheva, Maharashtra (the “Project”) and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B.) The Operation and Maintenance Agreement requires the Operator to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Operation and Maintenance Agreement” means the Operation and Maintenance Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Operator asking the latter to cure the breach or default specified in such notice; Unless otherwise specified, the cure period shall be 90 days for maintenance and 15 days for financial issues except last year when cure period shall be reduced to 30 days for maintenance.

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Article 6.1;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually; and

“Sub-Accounts” means the respective sub-accounts of the Escrow Account, into which the monies specified in Article 18 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Operation & Maintenance Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Operation & Maintenance Agreement.
- 1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.
- 1.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Operation & Maintenance Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Operator in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Operator hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and

the Operator, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Operator shall have any rights hereunder as the beneficiaries of or as third-party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Operator or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Operator or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Effective Date, the Operator shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Operator shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.
- 2.4 Escrow Bank's fee The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Operator. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.
- 2.5 Rights of the Parties Save and except as otherwise provided in the Operation & Maintenance Agreement, the rights of the Authority, the Lenders' Representative and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Operator shall have no other rights against or to the monies in the Escrow Account.
- 2.6 Substitution of the Operator The Parties hereto acknowledge and agree that upon substitution of the Operator with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Operator under this Agreement on and with effect from the date of substitution of the Operator with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

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

- (a) all monies received in relation to the Project from any source;
- (b) All funds and any other revenues from or in respect of the Project, including the proceeds of any ground rent, deposits, capital receipts or insurance claims etc.;
- (c) All payments by the Authority, after deduction of any outstanding payments.; and
- (d) Termination Payment by the Operator

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Operation and Maintenance Period

4.1.1 The Operator shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) All taxes/Statutory payment due and payable by the Authority for and in respect of the Project;
- (b) All taxes due and payable by the Operator for and in respect of the Project;
- (c) Any amounts due and payable to the Authority;
- (d) All payments and Damages certified by the Authority as due and payable to it by the Operator; and
- (e) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (f) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (g) Balance, if any, in accordance with the instructions of the Operator.

4.1.2 The Operator shall not in any manner modify the order of payment specified under this Article 4.1 of the Agreement, except with the prior written approval of the Authority.

4.2 Withdrawals upon Completion/Option to Exit/Termination

4.2.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Completion/ Option to Exit/ Termination, be appropriated in the following order:

- (a) All taxes due and payable by the Operator for and in respect of the Project;
- (b) Outstanding payments due to the Authority;
- (c) All payments and Damages certified by the Authority as due and payable to it by the Operator;
- (d) Incurred or accrued O&M Expenses;

- (e) retention and payments relating to the liability for defects and deficiencies set forth in the O&M Agreement
- (f) Any other payments required to be made under this Agreement; and
- (g) Balance, if any, in accordance with the instructions of the Operator:

Provided that no appropriations shall be made under Sub-Article f) of this Clause 4.2.1 until a Vesting Certificate has been issued by the Authority under the provisions of the O&M Agreement.

- 4.2.2 The provisions of this Article 4.2 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 4.2.1 have been discharged.

4.3 Application of insufficient funds:

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Articles 4.1 and 4.2, as the case may be. , The Operator shall at all times maintain the sufficient balance to meet all the requirements as set forth in the Escrow Agreement

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Operator during the period of Suspension under Article 30 of the Operation & Maintenance Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Operator under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Operator.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7(seven) business days prior to each Payment Date (as mentioned in Annexure ___ to be transferred in Authority / Bank account details (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Operator and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances

in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Operator upon a certificate signed by or on behalf of the Operator;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Operator or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Operator of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Operator (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Operator commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Operator causes the Escrow Bank to transfer funds to any account of the Operator in breach of the terms of this Agreement and fails to cure such breach by depositing

the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Operator commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Operation & Maintenance Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Operator in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

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

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Operator and the Lenders' Representative made on or after the payment by the Operator of all outstanding amounts under the Operation & Maintenance Agreement and the Financing Agreements including the payments specified in Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Operator. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary Escrow Agreement

The Lenders' Representative and the Operator shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub- Accounts pursuant to Article 4.1.1 and for matters not covered under this Agreement, restrictions on withdrawals by the Operator in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency

between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITIES

9.1 General indemnity

9.1.1 The Operator will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Operator 's obligations under the Operation & Maintenance Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Operator 's obligations under the Operation & Maintenance Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative

Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Operation & Maintenance Agreement and this Agreement, the provisions contained in the Operation & Maintenance Agreement shall prevail over this Agreement.

11.4 Alteration of terms

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

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third-party beneficiaries This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first

business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

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

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

THE COMMON SEAL OF OPERATOR has been AND DELIVERED For and on behalf of affixed pursuant to the resolution passed by the Authority by the :
by the Board of Directors of the Operator
has been affixed For and on behalf of pursuant to the resolution passed by the Board of Directors of the Operator : at its meeting held on the day of 20 hereunto affixed in the presence of , Director, who has signed these presents in token thereof and Company Secretary / Authorized Officer who has countersigned the same in token thereof[¥]

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

[¥]To be affixed in accordance with the articles of association of the Operator and the resolution passed by its Board of Directors.

Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) CONWARE at Nhava Sheva, Maharashtra

(Fax No.)
(E-mail address)

(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED THE SCROW
BANK by:

SIGNED, SEALED AND DELIVERED by the
AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

(Fax No.)
(E-mail address)

(Fax No.)
(E-mail address)

SCHEDULE H. VESTING CERTIFICATE

(See Article 26.4)

VESTING CERTIFICATE

1. The _____, Punjab State Container and Warehousing Corporation Limited (the “**Authority**”) refers to the Operation and Maintenance Agreement dated ***** (the “**Agreement**”) entered into between the Authority and ***** (the “**Operator**”) for Selection of Operator for Operation & Maintenance of Container Freight Station (CFS) at Dronagiri Node, Plot No. 2, Sector 2, Navi Mumbai, NhavaSheva, Maharashtra (the “**Project**”).
2. The Authority hereby acknowledges compliance and fulfilment by the Operator of the Divestment Requirements set forth in Article 26.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Operator in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Operator in any manner of the same.

Signed this **** day of ****, 20 at [****]

AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED

For and on behalf of OPERATOR by:
(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED

for and on behalf of AUTHORITY by:
(Signature)

(Name)

(Designation)

(Address)

2.

SCHEDULE I. SUBSTITUTION AGREEMENT

(See Article 28.3.1)

This SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

[The _____] represented by _____, Department of Agriculture and Farmer's Welfare and having its principal office(s) (hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at .., (hereinafter referred to as the "Operator" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

..... (insert name and particulars of Lenders' Representative) and having its registered office at .., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- i. The Authority has entered into an Operation & Maintenance Agreement dated with the Operator (the "Operation & Maintenance Agreement") for the Project at in on operate, maintain and transfer ("OMT") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- ii. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- iii. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Operation & Maintenance to a Nominated Company in accordance with the provisions of this Agreement and the Operation & Maintenance Agreement.
- iv. In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Operation & Maintenance to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Operation & Maintenance Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“**Agreement**” shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Board of Arbitrators**” shall have mean an arbitral tribunal comprising of one nominee arbitrator from the Authority, Operator and Lenders' Representative;

“**Financial Default**” shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Operator for a minimum period of [3 (three) months];

“**Indemnified Party**” shall have the meaning ascribed thereto in Article 7.2;

“**Indemnifying Party**” shall have the meaning ascribed thereto in Article 7.2;

“**Lenders' Representative**” shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

“**Nominated Company**” shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Operation & Maintenance as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Article 3.2.1; “**Parties**” shall mean the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually; and “**Rules**” shall have the meaning ascribed thereto in Article 8.1.1.

1.2. Interpretation

- 1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2. References to Articles are, unless stated otherwise, references to Articles of this Agreement.
- 1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Operation & Maintenance Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Operation & Maintenance Agreement.
- 1.2.4. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Operation & Maintenance Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1. Assignment of rights and title

The Operator hereby agrees to assign the rights, title and interest in the Operation & Maintenance to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Operation & Maintenance Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE OPERATOR

3.1. Rights of substitution

Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Operator by a Nominated Company under and in accordance with the provisions of this Agreement and the Operation & Maintenance Agreement.

The Authority hereby agrees to substitute the Operator by endorsement on the Operation & Maintenance Agreement in favour of the Nominated Company selected by the Lender's Representative in accordance with this Agreement. For avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Operator either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

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

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Operator by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Operator and undertake the operation and maintenance of the Project in accordance with the provisions of Article 31 of the Operation & Maintenance Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Operation & Maintenance Agreement. The aforesaid Suspension shall be revoked upon substitution of the Operator by a Nominated Company, and in the event such substitution is not completed within [180 (one hundred and eighty)] days from the date of such Suspension, the Authority may terminate the Operation & Maintenance Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Operation & Maintenance Agreement; provided that upon written request from the Lenders' Representative and the Operator, the Authority may extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days.

3.3. Substitution upon occurrence of Operator Default

3.3.1. Upon occurrence of an Operator Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant [15 (fifteen)] days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Operator by a Nominated Company.

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of [15 (fifteen)] days specified in Article 3.3.1, stating that it intends to substitute the Operator by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Operator by a Nominated Company in accordance with the provisions of this Agreement within a period of [180 (one hundred and eighty)] days from the date of such representation, and the Authority shall either withhold Termination or undertake

Suspension for the aforesaid period of [180 (one hundred and eighty)] days; provided that upon written request from the Lenders' Representative and the Operator, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for Substitution

- 3.4.1. The Authority and the Operator hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Article 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Operation & Maintenance to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Operator towards the Authority under the Operation & Maintenance Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2. To be eligible for substitution in place of the Operator, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Operation & Maintenance; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Operation & Maintenance Agreement
 - (b) endorse and transfer the Operation & Maintenance to the Nominated Company, on the same terms and conditions, for the residual Operation & Maintenance Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of Operation & Maintenance in favour of the Nominated Company in accordance with this Agreement, it shall within [15 (fifteen)] days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall there transfer and endorse the Operation & Maintenance within [15 (fifteen)] days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Operator.
- 3.4.5. The transfer of Operation & Maintenance hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Operation & Maintenance Agreement, be undertaken by transfer of no less than [75% (seventy five per cent)] of the equity of the Operator to the Nominated Company, and upon such transfer hereunder, the

Operator shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Operation & Maintenance Agreement.

3.4.6. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Operator. The Operator irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Operation & Maintenance in favour of the Nominated Company. The Operator agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Operator's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Operator shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Operation & Maintenance as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Operator shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Operator in the event of such Nominated Company's assumption of the liabilities and obligations of the Operator under the Operation & Maintenance Agreement.

5. TERMINATION OF OPERATION & MAINTENANCE AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Operation & Maintenance Agreement forthwith, and upon receipt of such notice, the Authority shall consider request for termination, undertake Termination under and in accordance with the provisions of Article 25 of the Operation & Maintenance Agreement. and shall take appropriate decision within a period of 45 days.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of [180 (one hundred and eighty)] days or any extension thereof as set forth in Article 3.3.2, the Authority may terminate the Operation & Maintenance Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Operator hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the

Operator, without any further reference to or consent of the Operator, the Debt Due upon Termination of the Operation & Maintenance Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) Completion of the Agreement by efflux of time; or
- (c) Exercise of option to exit this Agreement by the Operator; or
- (d) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1 General indemnity

- 7.1.1. The Operator shall indemnify, defend and hold the Authority and the Lenders 'Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator of any of its obligations under this Agreement or on account of failure of the Operator to comply with Applicable Laws and Applicable Permits.
- 7.1.2. The Authority shall indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Operator's obligations under the Operation & Maintenance Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3. The Lenders' Representative shall indemnify, defend and hold the Operator harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Operator's obligations under the Operation & Maintenance Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

- 7.2.1. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [15 (fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the

proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Operator and the Lender's Representative. Such arbitration shall be held in accordance with such rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against in in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Operation & Maintenance Agreement and this Agreement, the provisions contained in the Operation & Maintenance Agreement shall prevail over this Agreement.

9.4 Alteration of terms

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

9.5 Waiver

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [3 (three)] years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an

additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30(five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed tube received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are tube delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

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

THE COMMON SEAL OF OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the ..day of 20 hereunto affixed in the presence of , Director, who has signed these presents in token thereof and , Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(E-mail Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative

(Signature)

(Name)

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(E-mail Address)

(Designation)

(Address)

(Fax No.)

(E-mail Address)

In the presence of:

1. _____
2. _____

SCHEDULE J. DELETED

SCHEDULE L. FORMAT FOR THE EXCESS VARIABLE REVENUE COMPUTATION

	MGT	Actual Volume of Business (TEUs) (Illustration)		Payment Due (for number of TEUs)			
Qtr.	Cumulative MGT	Assumed Volume of business during the qtr.	Cumulative Volume TEUs at the end of qtr.	Cumulative TEUs for which Payment is due till the qtr. under consideration (Higher of cumulative MGT & Actual Cumulative volume)	No. of TEUs for which Payment is done till previous qtr.	Actual no. of TEUs for which Payment should be done for current quarter = (Cumulative TEUs till the end of the qtr., less TEUS for which payment is done)	Actual Payment of Variable Fees for the qtr. under consideration
I	II	III	IV	V=Higher of II & IV	VI	VII =V-VI	VIII= VII x A
Q1							
Q2							
Q3							
Q4							

Note: For the purpose of calculation of the Excess Variable Revenue Computation the Rate quoted by the Operator has been considered as "A."

SCHEDULE M. DELETED

SCHEDULE N. CIDCO LEASE DOCUMENT

(Refer copy of the Agreement enclosed herewith)

Following Lease Documents are provided herewith:

1. Agreement between CIDCO and CONWARE dated 17.02.2004