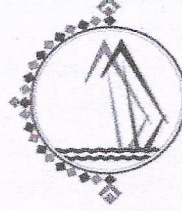




## DEENDAYAL PORT AUTHORITY



Office of the Executive Engineer (D)  
Room No.204, Annex  
Administrative Office,  
Gandhidham, Kutch, Pin-370201  
Tel (o) : (02836) 220038  
Email: kptdesignsection@gmail.com

No. EG/WK/4823 (IE)

Date : 22/10/2024

To,  
IPA Empaneled List of Independent Engineers  
(List enclosed)

### Expression of Interest

Sub: **Appointment of Independent Engineer for the work of "Development of Marine Liquid Terminal Facilities Consisting of SPM & Two Product Jetties in Deendayal Port Authority Waters at OOT, Vadinar, Deendayal Port on Captive Use Basis".** – Invitation for Expression of Interest (EOI) along with budgetary offer from Indian Ports Association Empaneled list of Independent Engineer - Reg.

Sir,

Deendayal Port Authority (DPA) intends to appoint Independent Engineer for the subject work.

Kindly submit your Expression of Interest along with budgetary-offer (as per Annexure-I). The period of the assignment is tentatively 26 Months (20 Months for Construction + 6 Months post Commercial Operation Date (COD)) from the date of intimation to start of work, for the subject work on the basis of Brief Summary & Scope of Work along with relevant enclosures of Concession Agreement, attached hereto as **Annexure -III**.

The rates quoted must be exclusive of GST and inclusive of all other taxes, duties, cess, etc for performing the Scope of work. The GST applicable shall be shown separately.

Your Expression of Interest along with budgetary offer for the above work should reach to the following address **on or before 7/11/2024**.

### Address:

Executive Engineer (Design),  
Room No 204,  
Annex, A.O. Building,  
Deendayal Port Authority,  
Gandhidham (Kutch)-370201.  
Email ID: kptdesignsection@gmail.com

Yours faithfully,

22/10/2024  
Executive Engineer (Design)  
Deendayal Port Authority

## List of Empanelment of Independent Engineers

1. M/s I.R Class Systems & Solutions Pvt Ltd  
52A, Adishakaracharya Marg,  
Opposite Powai Lake,  
Powai, Mumbai,  
Maharashtra- 400072  
Email- industrial\_services@irclass.org,prasad.yadav@irclass.org  
Phone no : +91-8879427273
  
2. M/s ABPS Infrastructure Advisory Pvt Ltd  
301, Town Centre II,  
Andheri Kurla Rd, Andheri East,  
Mumbai, Maharashtra -400059  
Email: contact@abpsiapl.com  
Phone no: 022-40856500
  
3. M/s BMT Consultants  
310, Sarthik Square,  
Sarkhej, Gandhinagar Highway  
Ahmedabad-380054  
Email:rajan.narayan@bmtindia.org,tarun.kaw@bmtindia.org.  
Phone no:+91- 079-4002 8708
  
4. M/s RITES LTD  
Shikhar, Plot no 01,  
Sector 29, Gurgaon,  
Haryana,India – 122001  
Email : info@rites.com  
Ph. No: +91-124-2571666
  
5. M/s VCS Quality Systems Pvt Ltd.  
505, 5th Floor,360 Degree Business Park,  
L.B.S. Marg, Mulund West,  
Next to R-Mall,Mumbai-400080  
Email :info@vcsquality.com, info@vcsprojects.com  
Phone no: +91-22-21649720

### **Disclaimer**

The information in this document shared by the DPA (“Authority”) has been prepared to assist the applicants in preparing the non-binding EOI and it is clarified that:

- a) It does not constitute an invitation to offer or an offer in relation to the transaction.
- b) This document does not constitute any contract or agreement of any kind whatsoever.
- c) It shall not be assumed that there shall be no deviation or change in any of the information mentioned herein. While this document has been prepared in good faith, neither DPA nor any of their respective officers or employees or advisors or agents make any representation or warranty or shall have any responsibility or liability whatsoever in respect of any statements or omissions here from. Any liability is accordingly expressly disclaimed by DPA or any of their respective officers, employees, advisors or agents, whether negligent or otherwise.



**DEENDAYAL PORT AUTHORITY**  
**CIVIL ENGINEERING DEPARTMENT**

**Brief Summary**

Deendayal Port is situated on the West Coast of India, in the Gulf of Kutch and along the West Bank of Kandla Creek at 70° 13" E longitude and 23° 01" N Latitude. The Port was developed after Independence of India. It was commissioned in the year 1955 with 2 dry cargo berths and was declared a Major Port.

The Deendayal Port Authority, Main Gateway to the vast hinterland of Northwestern India is serving the International Maritime Trade for over five decades with cost-effectiveness and efficiency as hallmarks. Since its inception, Deendayal Port has shown a phenomenal growth, significantly contributing to India's EXIM trade. The vast rich hinterland at its reach and handling of kaleidoscopic variety of commodities ranging from crude to chemicals, dry bulk to break-bulk and containers to over-dimensional project cargo make this Port the 'Most Preferred Port of Call' in the region.

Presently the Port has fourteen cargo berths for handling dry cargo traffic, two berths for handling container cargo, seven oil jetties for handling POL products and other liquid cargo traffic at Kandla within Kandla Creek, one Offshore Terminal at Tekra for handling dry bulk cargo, and three Single Buoy Mooring (SBM) & Two products Jetties at Vadinar, in Jamnagar District, for handling crude oil. The container handling berth in Kandla has quay length of 545 meters and is equipped with 4 rail mounted quay cranes, 2 harbor mobile cranes, 8 rubber tyre gantry cranes and 4 reach stackers along with 24 nos. of tractor trailer. The present handling capacity of the terminal is 6 Lakhs TEU's per annum.

The Port has also developed satellite Port at Offshore Oil Terminal, Vadinar (District : Devbhumi Dwarka, State: Gujarat). As for the Deendayal Port, ever since the inception of the Port in the year 1955, the Port has been serving as the mother feeder of petroleum products to cater to the needs of the Northern region of the country. The Public Sector Oil Companies/Private Oil Refinery viz. Nayara Energy Limited have followed suit and found Deendayal Port the most feasible, cost-efficient and full of opportunities for growth & development and establish their foreshore installations at Deendayal Port limit. As a result of the vast oil handling facilities created by DPA, the Deendayal Port handled about 47.42 MMTPA of crude oil during the year 2023-24 for catering four major oil refineries established at Panipat, Mathura, Koyali and Jamnagar.

Presently at Off-Shore Oil Terminal Deptt. (O.O.T) Vadinar, DPA, 3 SBMs for handling crude oil and two Product jetties for handling POL products are in operation. A draft of up to 33 Mtrs. at SBMs and 14 Mtrs. at Product jetties is available. The first, second and 3rd SBMs (where VLCCs having 3 lakh DWT and more have been handled) were commissioned at O.O.T. Vadinar during 1978 (IOCL), 1997(IOCL),

2006 (Nayara) respectively. The first and second product jetties (developed by Nayara) were commissioned during 2006 and 2009 respectively.

The Deendayal Port Authority had entered into a Concession Agreement with M/s Coviva Energy Terminals Limited (CETL) (100% subsidiary of M/s Nayara Energy limited) dated 16/4/2015 for “Development of Marine Liquid Terminal Facilities consisting of SPM & Two Product Jetties in Deenayal Port Authority waters at OOT Vadinar” Deendayal Port on captive use basis, for handling Crude Oil & Petroleum Products.

**The salient features of the Marine Liquid Terminal Facilities proposed to be set up at OOT,Vadinar are mentioned as under:**

- Development of Marine Liquid Terminal Facilities consisting of One SPM (CALM type) & associated Pipeline (about 10 Km) and Two Product Jetties (Total 600m length) having one central platform, two mooring dolphins and two breasting dolphins on each side.
- **Location : SPM and Allied Facilities** : At Vadinar in DPA waters near existing SPM of M/s Nayara Energy Limited.  
**Product Jetties** : North of Existing Two Product jetties of Nayara at Vadinar.
- **Estimated Cost** : 448 crores. (SPM-Rs 305 Crore and Product Berths-143 Crore)
- **Capacity** : SPM -14.5 MMTPA and Two Product berths : 10 MMTPA.

This Marine Liquid Terminal Facility consisting of SPM & Two Product Jetties being developed through captive use basis. Deendayal Port Authority being Concessioneing Authority has signed Concession Agreement with **M/s Coviva Energy Terminal Limited** ( Erst while Vadinar Liquid Terminal Limited) (Concessionaire) for developing the Project facilities on 16.04.2015. After meeting with Condition Precedents of Concession Agreement by both the Parties (the Concessioneing Authority and the Concessionaire), the Concessioneing Authority issued award of Concession to M/s Coviva Energy Terminal Limited on 16.08.2019. The Concessioneing Authority has already licensed out required area to the Concessionaire, M/s Coviva Energy Terminal Limited on captive user purpose on "As is where is basis" for development of project facilities as per the Concession Agreement. The Concessionaire, as per the Concession Agreement, shall be responsible for Designing, Engineering, Installation, Financing, Procurement, Construction, Commissioning, Operation & Maintenance and Management of the Project and the Project facilities for a concession period of 30 years commencing from the date of Award of Concession. The Construction phase for development of the Project facility shall be 36 months from date of Award of Concession. However, due to expansion activities of Parent company of the Concessionaire (M/s Nayara Energy Limited), the Concessionaire could not start the Construction as per the schedule and recently the Authority has granted extension of time for Completion

of construction period till 31.08.2026. Accordingly, the Concessionaire has to complete the construction activities as per the extension of time granted. The Independent Engineer, duly appointed will supervise and monitor the compliance by the Concessionaire with the Project requirement particularly during Construction phase of project facilities. In this regard, a detailed Scope of Work of Independent Engineer for Marine Liquid Terminal Facility (SPM & Two product Jetties) (Project) is set out under Clause No. 1. .

## **Brief Scope of Work**

### **1. SCOPE OF THE WORK:**

#### **1.1. Role and functions of the Independent Engineer is as under**

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

- (i) review of the Designs and Drawings;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- (iv) determining, as required under the Concession Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Concession Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as regards the Designs & drawings; and
- (vii) undertaking all other duties and functions as envisaged under the Concession Agreement, which has been broadly described in Annexure II.

#### **1.2. Review of Designs and Drawings**

- (i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.
- (ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessions Authority, if any while furnishing the comments.
- (iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of

construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

- (v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- (vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- (vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- (viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.
- (ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioneing Authority and the Concessionaire forthwith.
- (x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioneing Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessioneing Authority.



- (xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.
- (xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

## **TESTS**

- 1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their Contractor shall be as per the relevant provisions of this Agreement.
- 2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipments and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.
- 3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.
- 4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipment's and machinery.
- 5) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipment's and machinery and any other component to ascertain the soundness of the work.
- 6) Schedule of Tests
  - (i) The Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of this Agreement.
  - (ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted.
- 7) Tests
  - (i) **Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
  - (ii) **Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery

- (iii) **Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.
- (iv) **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.
- (v) **Safety Review:** Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Agreement.
- (vi) **The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged by the Concessionaire.

8) The Independent Engineer shall obtain a copy of operational and maintenance manuals of the Project Requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements:

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.

9) The test procedure shall be followed as per ASTM, BIS, IS

10) Test shall also satisfy the appropriate Authority and Certification

- (i) Dock safety Directorate
- (ii) Environmental Authority
- (iii) Director of Explosives
- (iv) Fire
- (v) Ground Water Authority
- (vi) Customs
- (vii) Indian Railways

### **1.3. Time Schedule:**

The tentative period of the assignment is 26 Months (20 Months for Construction + 6 Months post Commercial Operation Date (COD)) from the date of intimation to start of work or extension thereof, if any, for the Project.

### **1.4 .General Terms & Conditions:**

The Budgetary Offer shall be for a period of 26 months (Tentative) (20 Months for Construction + 6 Months post Commercial Operation Date (COD)), from the date of intimation to start of work.

**Budgetary Offer**

**Appointment of Independent Engineer for the work of " Development of Marine Liquid Terminal Facilities Consisting of SPM & Two Product Jetties in Deendayal Port Authority Waters at OOT, Vadinar, Deendayal Port on Captive Use Basis".**

Description	Amount in Rs.	
	In figure	In words
Lump-sum charges including all taxes, duties for performing Scope of Work for the period of 26 months (tentative).  Note: The amount quoted shall be exclusive of Goods & Service Tax.		
<b>Total Rs.</b>		

Signature with seal

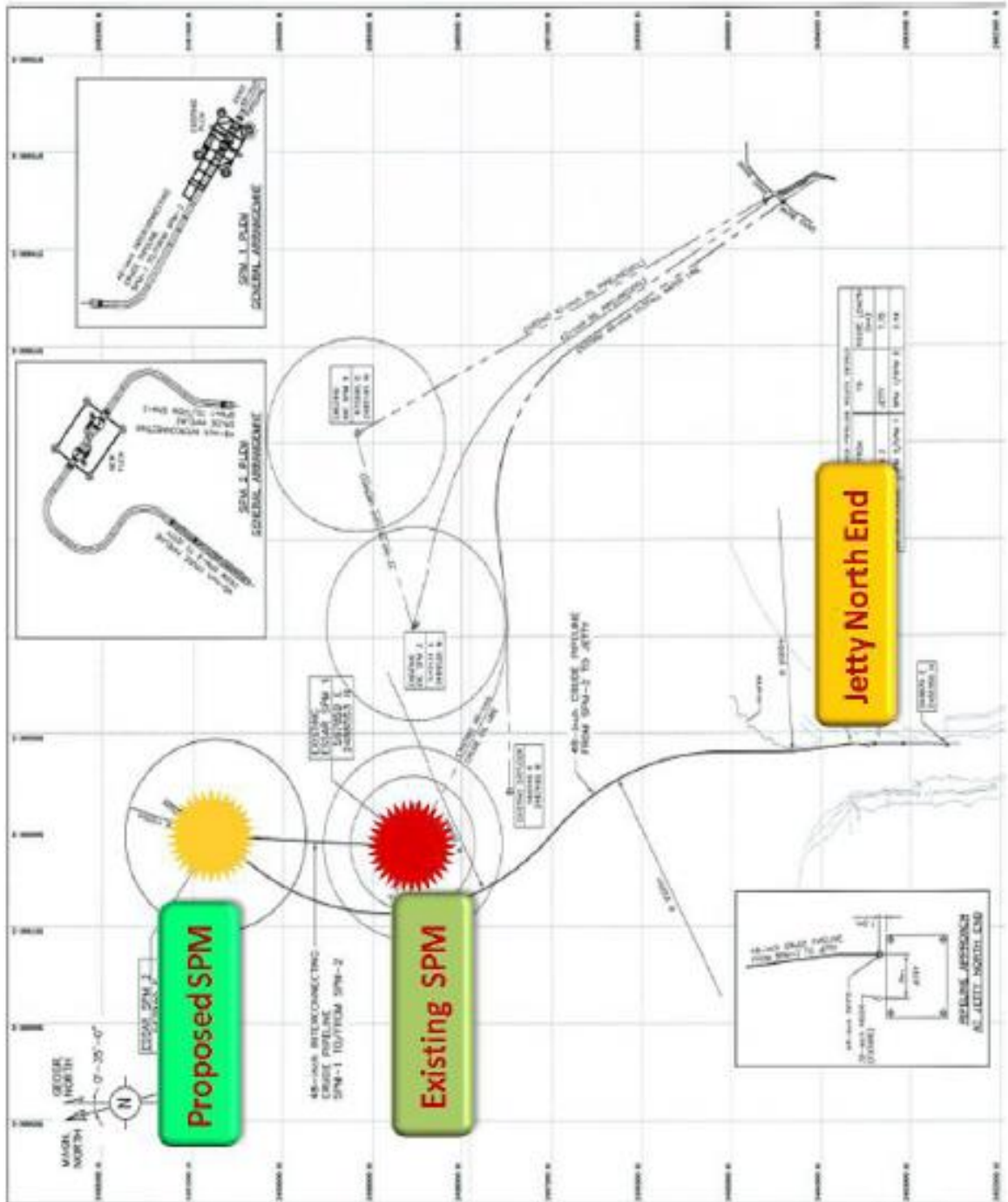
Designation: \_\_\_\_\_

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Layout Drawing of the Project Facility as per Concession Agreement

SPM





**Extract of Concession Agreement****1.3 Interpretations**

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

In this Agreement unless the context otherwise requires:

- a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c) the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- d) the words “include” and “including” are to be construed without limitation;
- e) references to “construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- g) any reference to day shall mean a reference to a calendar day;
- h) any reference to month shall mean a reference to a calendar month;
- i) “Recital”, “Article” and “Appendix” shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;



- k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- l) unless otherwise stated, any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
- m) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and
- n) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

#### **1.4 Measurements and Arithmetic Conventions**

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

#### **1.5 Ambiguities and Discrepancies**

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

- a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- c) between any value written in numerals and that in words, the latter shall prevail; and
- d) between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

### **ARTICLE 6 PROJECT IMPLEMENTATION**

#### **6.1 Preparation of Designs and Drawings**

The Concessionaire shall at its cost, charges and expenses, prepare the Designs and Drawings in conformity with the Project Requirements.

#### **6.2 Review of the Designs and Drawings**

- a. The Concessionaire shall submit the Designs and Drawings as set out in concession agreement for the review of the Independent Engineer. Simultaneously, the Concessionaire shall also provide the Concessioning Authority with a set of the Designs and Drawings.
- b. The Independent Engineer shall review the Designs and Drawings submitted by the

Concessionaire and provide its comments/observations and suggestions on the same (including taking into account the comments/observations of the Concessions Authority in respect thereof as it may in its sole discretion deem fit) within 21 (twenty one) Days from the date of the receipt of such Designs and Drawings.

- c. In the event that the Independent Engineer has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Engineer with regards its compliance.
- d. If the Independent Engineer does not make any observation/comments with respect to the Designs and Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer has no suggestions to make with respect to the Designs and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- e. The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessions Authority at its sole discretion may suitably extend the Construction Phase or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- f. The Concessionaire shall not change any Designs and Drawings reviewed by the Independent Engineer under this Agreement, without submitting such revised Designs and Drawings for the review of the Independent Engineer.
- g. Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- h. Any review of the Designs and Drawings conducted by the Concessions Authority is solely for the Concessions Authority's own information and that by conducting such review, the Concessions Authority does not accept any responsibility for the same.
- i. The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Concessions Authority has accepted responsibility for the engineering or soundness of any work relating to the Project/ the Project Facilities and Services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions under Concession Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project/ the Project Facilities and Services or any part thereof.

### 6.3 Construction Phase

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

#### 6.4 Obligations of the Concessionaire

Without prejudice to the generality of Article 1.3 and in addition to any of its other obligations under this Agreement, during the Construction Phase, the Concessionaire shall:

- a. arrange for, in a timely manner all necessary financial and other resources required for construction and installation of the Project Facilities and Services.
- b. engage professionally competent Persons for project management and construction and ensure that all works are carried out in compliance with the Construction Standards;
- c. give written notice to the Concessions Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessions Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessions Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessions Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessions Authority will not be enforceable against the Concessions Authority;
- d. obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- e. provide to the representative(s) of the Concessions Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in construction and to ascertain compliance with any of the requirements of Concession Agreement. Provided that non-inspection by the Concessions Authority of any works shall not, in relation to such works,
  - (i) amount to any consent or approval by the Concessions Authority nor shall the same be deemed to be waiver of any of the rights of the Concessions Authority under this Agreement; and
  - (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- f. provide monthly reports on the progress of Construction Works or such other relevant information as may be required by the Independent Engineer;
- g. promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure timely completion of construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of Concession Agreement; and
- h. to ensure safe and timely construction and completion of the Project / Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/ create barriers on the flow of water or on the road or port traffic, adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of Construction works and shall remove the interruption or diversion with the period specified by the Independent Engineer.

## **6.5 Obligations of the Concessions Authority**

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

- a. in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- b. make available all records of sub-soil investigations carried out on its behalf in the Port's Assets, if requested by the Concessionaire. It is clarified that the Concessionaire shall be solely responsible for determining the adequacy or otherwise of such investigations and will not in reliance of such records, be entitled to claim any relief under Concession Agreement;
- c. upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer promptly obtain approval of the Collector of Customs, publish requisite notifications in the Official Gazette and declare the Project Facilities and Services as ready for operation in accordance with the provisions of Section 37 of the MPT Act
- d. upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project; and
- e. subject to the Concessionaire / Contractor complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

## **6.6 Suspension of Works**

- a. Upon recommendation of the Independent Engineer to this effect, the Concessions Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Concessions Authority, such work is not in accordance with the Construction Standards / Safety Standards.
- b. The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Concessions Authority and thereupon represent to the Concessions Authority / Independent Engineer, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessions Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with provisions of the concession agreement.

## **6.7 Issue of Completion Certificate**

- a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to commence commercial operations. The

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

- b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessions Authority copies of all Test data including detailed Test results;
- c) Upon completion of Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a Completion Certificate substantially in the form set forth in Appendix 10.
- d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the “**Provisional Certificate**”) if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”) to be completed by the Concessionaire within a stipulated time. Provided, notwithstanding the foregoing, no such Provisional Certificate will be issued pending notifications in the Official Gazette by the Collector of Customs, in accordance with the provisions of Section 37 of the MPT Act for the Project Facilities and Services. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;
- e) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the cope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

## **6.8 Change of Scope**

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

- Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”);
- c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessions Authority, the following:
- i. the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
  - ii. the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;
- d) Upon receipt of the foregoing information, the Concessions Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessions Authority does not disagree with the cost assessment of the Concessionaire, the Concessions Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessions Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of an Expert to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessions Authority may issue an order to implement the Change of Scope; The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- e) The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessions Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessions Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessions Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessions Authority shall disburse to the Concessionaire such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Construction Works or procuring equipments following an order for a Change of Scope;
- g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessions Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection



criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioneing Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof; and.

h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope as may be approved in writing by the Concessioneing Authority and all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions contained in Article 6.8 (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

### **18.2 Concessionaire's Obligations**

The Concessionaire shall;

- a) hand over peaceful possession of the Project Site, Port's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessioneing Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- c) hand over to the Concessioneing Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- d) transfer technology and up-to-date know-how relating to operation and maintenance of the Port's Assets and/or the Project Facilities and Services;
- e) transfer or cause to be transferred to the Concessioneing Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessioneing Authority; and (iii) those the Concessioneing Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioneing Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessioneing Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessioneing Authority;
- f) at its cost, transfer to the Concessioneing Authority all such Applicable Permits which the Concessioneing Authority may require, and which can be legally transferred. Provided if the termination is on account of Concessioneing Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessioneing Authority;
- g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the

Project Site/Port's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessioneing Authority in terms of the provisions of this Agreement.

## **APPENDIX 6**

### **DESIGNS AND DRAWINGS**

Concessionaire shall prepare Designs & Drawings for the following items but not limited to:

**A. Civil and Structural Work:-**

- i. Layout plans of Project Facilities and Services.
- ii. Detailed structural analysis, design & drawings for all project facilities inter alia for the components of the Project Facilities indicated in Appendix- 4 (Project Requirements) like Civil & Structural Works, Allied facilities, etc.

**B. Equipment**

The Concessionaire shall prepare general arrangement drawings and typical details for cargo handling equipment.

**C. Electrical Works**

The Concessionaire shall prepare detailed drawings of the electrical system.

## **APPENDIX 7**

### **TERMS OF REFERENCE FOR INDEPENDENT ENGINEER**

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

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

- (i) review of the Designs and Drawings;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as regards the Designs & drawings; and
- (vii) undertaking all other duties and functions as envisaged under the Agreement.

#### **2. Review of Designs and Drawings**

(i) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data, including, if relevant the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments in accordance with the Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Project Requirements, Construction Standards and Safety Standards.

(ii) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessions Authority, if any while furnishing the comments.

(iii) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.

(iv) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “Inspection Report”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Construction Works.

(v) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.

(vi) For determining that the Construction Works conform to Construction Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

(vii) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

(viii) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.

(ix) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessioning Authority and the Concessionaire forthwith.

(x) If at any time during the Construction Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessioning Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

(xi) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessions Authority.

(xii) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.

(xiii) The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in the Appendix hereto and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

## **Annexure**

### **Tests**

1) All materials to be used, all methods to be adopted and all works performed shall be strictly in accordance with the relevant IS specification for the Project Requirement. The relevant specification for the safety and navigational aspects shall be referred for the type of tests and frequency of tests. For this purpose, the responsibility of the Concessionaire and their Contractor shall be as per the relevant provisions of this Agreement.

2) The Concessionaire shall carry out quality control tests on the material and works at the frequency stipulated in the respective IS codes. The tests on equipment's and machinery shall be ensured while its manufacturing and subsequent installation at site. In case of absence of clear indication of the frequency and type of tests the Good Industry Practice shall be used for testing with the approval of the Independent Engineer.

3) The Concessionaire shall carry out all necessary tests on materials and works independently and keep their records for reference. The Concessionaire shall prepare a quality audit manual in consultation with the Independent Engineer to ensure better quality of work.

4) The provisions of type and frequency of test in relevant IS codes are minimum. The Concessionaire shall conduct all possible tests to ensure quality construction and installation of equipment's and machinery.

5) The Independent Engineer at its discretion and consistent with the sound engineering practices shall carry out any non-destructive test on completed works, structures, equipment's and machinery and any other component to ascertain the soundness of the work.

### **6) Schedule of Tests**

(i) The Concessionaire shall submit a detailed inventory and particulars of all works and equipment and machinery forming part of this Agreement.

(ii) The Concessionaire shall notify the Independent Engineer for its readiness for tests to be conducted.

## **7) Tests**

**(i) Visual and physical test:** The Independent Engineer shall conduct a visual and physical check of the Project Requirements to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

**(ii) Test drive:** The Independent Engineer shall arrange for test drives of the movable equipment for the quality of service as per the relevant provisions of the IS codes for manufacture and testing of equipments and machinery

**(iii) Structural test:** All the equipment and machinery and structures shall be subjected to load test as the case may be for ascertaining safe working loads.

**(iv) Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Requirements with the environment requirement set forth in Applicable Laws and Applicable Permits.

**(v) Safety Review:** Safety audit of the Project Requirements shall have to be undertaken with the assistance of the relevant statutory authorities and determine conformity of the Project Requirements with the provisions of the Agreement.

**(vi) The procedures for tests:** The procedures as stipulated in the relevant IS specifications shall be adhered and the equipments for testing shall be arranged by the Concessionaire.

**8) The Independent Engineer** shall obtain a copy of operational and maintenance manuals of the Project Requirements from the Concessionaire and verify the contents of the manual in order to meet the following requirements:

The operation and maintenance manual shall essentially comprise of general requirement of O&M, O&M plans, replacement of maintenance parts, schedule of routine maintenance, schedule of preventive maintenance and periodic maintenance. The manual shall also cover the minimum maintenance requirement to adhere to the Performance Standards as per the provisions of this Agreement. The manual shall generally cover the expected failures and time taken for repairs and maintenance.

9) The test procedure shall be followed as per ASTM, BIS, IS

10) Test shall also satisfy the appropriate Authority and Certification

(i) Dock safety Directorate

(ii) Environmental Authority

(iii) Director of Explosives

(iv) Fire



(v) Ground Water Authority

(vi) Customs

(vii) Indian Railways