# **STANDARD TERMS AND CONDITIONS**

The following standard terms and conditions (“**Conditions**”, “**Terms of Business**” or “**TOB**”) shall apply to any shipping line/non-vessel operating common carrier/user of the Services provided by **Visakha Container Terminal Private Limited, Visakhapatnam** (“**Operator**”) at the Container Terminal, who is not bound by the terms of a terminal service agreement with the Operator (hereinafter referred to as “**Customer**”, which expression shall, unless repugnant to the context or meaning hereof, be deemed to mean and include its employees, agents, contractors, sub-contractors and permitted assigns). The Customer is deemed to have acknowledged, read, understood, agreed to be legally bound by, and accepted these Terms of Business upon the entry of their Container, Permitted Cargo or Vessel into the Container Terminal. These Terms of Business are in addition to rules and regulations of the Container Terminal as updated from time to time.

1. **DEFINITIONS AND INTERPRETATION:**
	1. **DEFINITIONS**

The following words and expressions appearing in the TOB shall have the meanings as defined here in this Article, unless the context requires otherwise.

1. “**Adverse Weather Conditions**” means weather and/or sea conditions at the Port experienced that are sufficiently severe either:
	1. to prevent a Vessel from proceeding to berth at the Berth, remaining at the Berth, unloading/loading at the Berth and/or departing from the Berth in accordance with the weather standards prescribed in published Port Regulations in effect at the Port (including, their application by the harbour master of the Port (or such other officer in charge of operations at the Port)); or
	2. to cause an actual determination by the master/owner of the Vessel that it is unsafe for the Vessel to proceed to the Berth, remain at the Berth, unload/load at such berth or depart from the Berth.
2. “**Affiliate**” means, in relation to a Person, any other Person which directly or indirectly controls, is controlled by or is under common control with that Person.
3. “**Applicable Law(s)**” means, with respect to any Person (as defined below), property, transaction, condition or event, any present or future; any applicable constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, Governmental approval, Approvals (as defined below), consent or requirement of any Governmental Authority (as defined below), as construed from time to time by such Governmental Authority including environmental laws and labour laws, codes and standards prescribed by ‘Indian Standards and Codes' issued by the Bureau of Indian Standards, any internationally recognised standards and codes, specifications and regulations.
4. “**Approval(s)**” means any and all authorisations, consents, grants, approvals, licenses, permits, rulings, exemptions, no-objections, concessions, resolutions, filings, clearances, orders, notarizations, registrations, publications, notices of whatsoever nature that are required to be obtained from time to time in connection with the performance of the respective Parties' obligations under the TOB.
5. **“Anti-Bribery Laws**” means the anti-bribery and accounting provisions of the Foreign Corrupt Practices Act of 1977, as amended, and all other applicable anti-corruption and bribery Laws (including the U.K. Bribery Act 2010, The (Indian) Prevention of Corruption Act, 1988 and any rules or regulations promulgated thereunder or other Applicable Laws of other countries implementing the OECD Convention on Combating Bribery of Foreign Officials).
6. “**Anti-Money Laundering Laws**” means, the applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, The (Indian) Prevention of Money Laundering Act in 2002, as amended, the money laundering statutes of all jurisdictions in which any of the Parties or their Affiliates operate, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any relevant Competent Authority.
7. “**Berth**” shall mean the container berths operated and managed by the Operator.
8. “**Change in Law**” shall mean any of the following events affecting the Project;
9. enactment of any new Applicable Law;
10. modification or repeal of any Applicable Law;
11. any change in the interpretation or application of any Applicable Law by a court which has become final conclusive and binding or, via issuance of circulars/ clarifications/notification by any relevant Governmental Authority;
12. the imposition of any material condition on the issuance or renewal of any permits not currently imposed in such issuance or renewals otherwise; or
13. any change in applicable taxes, duties and cess which affects the performance of the obligations under the TOB.
14. “**Container(s)**” means any (empty or laden) container, flat-rack, open top, reefer container, tank container, conforming with ISO dimensional standards for international shipping and which is owned, leased, chartered, managed, operated and/or used by the Customer with ISO recommended lifting arrangements and consistent with the safety requirements of CSC (Convention for Safe Containers) plates, and which can be handled by means of a standard 20', 40' and 45' spreader; and/or a Non-Standard Container and/or an out of gauge container.
15. “**Container Terminal**” means the container terminal comprising container berths, the container yard and all other equipment and buildings which the Operator currently manages and operates at the Port.
16. “**Competent Authority(ies)**” means, in respect of a country, any of its Governments (central, state or local), or any ministry, directorate, inspectorate, department or political subdivision thereof, or any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to Government or law (including any court or tribunal or other adjudicative body), or any other governmental entity, instrumentality, agency, authority, corporate, committee or commission under the direct or indirect control of any such Government.
17. “**Day(s)**” means a calendar day of twenty-four consecutive hours beginning at 00:00 hours (midnight) and ending at 24:00 hours (midnight) as referred to in Indian Standard Time.
18. “**Directive**” means any requirement, instruction, direction, order, regulation or rule of any Competent Authority, and any modification, extension or replacement thereof from time to time in force which is legally binding.
19. “**Government**” or “**Governmental Authority**” shall mean the Government of India, the government of the any state in India, and local governments and all agencies, authorities, ministries, departments, boards, instrumentalities, municipalities, courts, tribunals, corporations, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having or claiming a regulatory interest in or jurisdiction over the Project site, the scope of services or the Parties and personnel or agents engaged by them for performance under the TOB.
20. “**ISPS Code**” means the International Ship and Port Facilities Security Code and the relevant amendments to Chapter XI of International Convention for Safety of Life at Sea, 1974.
21. “**Non-Standard Container**” means a Container accepted for transport/carriage on a container ship which cannot be handled by means of a normal use of a container spreader, even with attachments.
22. “**Operations Manager**”means any manager duly appointed from time to time by the Operator to oversee any operation at the Berth and shall include their deputies and / or assistants.
23. “**Payment(s)**” shall mean consideration to be paid by the Customer to the Operator, in accordance with the rate agreements and/or Scale of Rates agreed to by the Customer, for the Services provided at the Container Terminal.
24. “**Permitted Cargo**” means the cargo permitted to be handled at the Berth under the Concession Agreement.
25. “**Person**” means any individual, corporation, partnership, association, company, firm, trust, unincorporated organization, joint venture, Governmental Authority, or other entity.
26. “**Port**” shall mean Visakhapatnam Port Authority
27. “**Port Conditions of Use**”or“**Standard Operating Procedure**” means the conditions of use/ procedures/guidelines published by the Port/the Operator from time to time. Such conditions of use/ procedures/guidelines may be uploaded on the Port’s website/the Operator’s website and/or may be collected from the Operator’s office.
28. “**Port Regulations**” means the written procedures for operation of the Port and for the provision of port services at the Port, promulgated and/or amended from time to time pursuant to the provisions of the Indian Ports Act, 1908 and the Major Port Authorities Act, 2021.
29. “**Sanctioned Jurisdiction**” means any country or territory subject to comprehensive Sanctions.
30. “**Sanctioned Person**” means any Person that is (a) organized under the laws of, or resident or located in, any Sanctioned Jurisdiction, (b) included on any list of Persons subject to Sanctions (including, but not limited to, the U.S. Department of Treasury’s Specially Designated Nationals and Blocked Persons List and the Sectoral Sanctions Identification List; or any similar list maintained or administered by the United Nations Security Council, HM Treasury of the United Kingdom, the European Union, any European Union member state, or any other Governmental Authority where the Customer or any of its subsidiaries operates), or (c) owned 50% or more, directly or indirectly, controlled by, or acting on behalf or at the direction of any Person or Persons described in clauses (a) or (b).
31. “**Sanctions**” means those trade, economic and financial sanctions laws, embargoes, and restrictive measures administered, enacted or enforced from time to time by (a) the United States (including through the Department of the Treasury’s Office of Foreign Assets Control or the Department of State), (b) the European Union or any European Union member state, (c) the United Nations Security Council, (d) Her Majesty’s Treasury of the United Kingdom, or (e) any other Governmental Authority where any of the Group Person operates.
32. “**Services**” shall mean the entire services the Operator provides to the Customer.
33. “**Scale of Rates**” means the scale of rates and all amendments thereto issued by the relevant Governmental Authority in relation to the Port, from time to time.
34. “**Taxes**” shall mean all Indian taxes, duties, levies, and charges pursuant to Applicable Law (whether currently in force or coming into force on or after the Execution Date), including income tax, GST, customs duty, fees, cess, import duty, and any interest, surcharge, penalty or fine in connection therewith.
35. “**Vessel**” means any ship, container ship, conventional ships, multipurpose ships, supply vessels, naval vessels, barge, lighter or other ship of any description, including all lashing equipment for the proper securing of Containers, equipment or Cargo, its gear and all other equipment or other property on board.
36. **SCOPE OF SERVICES AND APPLICATION OF THE TOB:**
	1. The Operator shall provide the Customer with Services for the Permitted Cargo, at the Berth. The Parties acknowledge that the Berth is capable of accepting Vessels as per specifications set out in the TOB. The Operator shall endeavour to provide Services subject to technical, operational and commercial feasibility.
	2. The provisions of the TOB shall apply to: (a) all Services provided, or made available, by the Operator; (b) the use by the Customer of the Berth and/or the facilities at the Berth; and (c) all Vessels nominated by the Customer which berth at the Berth.
37. **SITE CONDITIONS:**

The Customer has and will be deemed to have familiarized itself with and considered all conditions which could affect arrival, mooring, manoeuvring, unmooring and departure of any Vessel at the Berth, including data relating to the Berth and its surroundings, the minimum water depth (at any state of the tide) and any physical, surface and sub-surface condition and to have taken into account climatic condition (“**Site Conditions**”). The Customer acknowledges that the Operator gives no warranty whatsoever in respect of the Site Conditions and it shall have no liability whatsoever and howsoever arising in respect of the Site Conditions.

1. **OBLIGATIONS OF THE OPERATOR:**
	1. The Operator shall perform the scope of Services in accordance with the terms the TOB and the requirements set forth under the relevant Berthing Approval(s).
	2. The Operator shall provide the Services on a first come first serve basis and non-exclusive basis. The Operator does not guarantee any speed or starting or completion times for the performance of its obligations under the TOB other than reasonable care and diligence. However, if the information required to be provided by the Customer as per the terms of the TOB is not received within the indicated timeframe as set out in the TOB, then the Customer may have to direct the Customer’s Vessel to wait in turn. The Operator will exercise reasonable despatch in providing Services but will not be liable for any delay whatsoever, howsoever caused (including negligence), unless a special arrangement is agreed to the contrary in writing with the Operator. If such arrangement is agreed, the Operator's liability will be limited in accordance with the TOB.
	3. The Operator shall provide Services against a Berthing Approval only upon receipt of the Payment. In the event that the Customer fails to make Payment, the Operator shall have the right to refuse the provision of Services without incurring any liability whatsoever. The Operator shall not be responsible for any delay in providing the Services or otherwise any consequence thereof due to non-payment or delay in receipt of the amounts or charges payable by the Customer. The Operator shall not be obligated to confirm any future Berthing Approval or provide Services pursuant to any future Berthing Approval, if Payments pursuant relevant Berthing Approval remain outstanding or if the Customer is not in compliance with any obligation under the TOB.
	4. Notwithstanding anything to the contrary, the Operator shall provide only such Services and perform only such obligations, that are in compliance with the Concession Agreement.
	5. The Operator shall obtain and maintain all general statutory permissions/licenses required for operating the Berth as may be required under the Concession Agreement.
	6. Subject to specific written instructions given by the Customer and accepted by the Operator in writing, the Operator shall have complete freedom in respect of the means and procedures to be employed in the provision of the Services. The Operator may deviate from the Customer’s instructions (whether or not accepted by the Customer) in any respect if the Operator considers it is necessary in the interest of the Customer and the Customer shall reimburse the Operator with all reasonable expenses incurred thereby.
	7. The Operator shall not be responsible for any demurrage occurred on the ships due to inability of the nominated Vessels to Berth due to non-readiness of the Customer.
	8. Without prejudice to any other rights under the TOB or otherwise, the Operator reserves the right, but is under no obligation, to inspect any Vessel and to take any action which the Operator considers reasonable to comply with the Applicable Law and/or the lawful requirements of any Governmental Authority.
2. **CUSTOMER’S OBLIGATIONS:**
	1. The Customer shall at all times and under all circumstances, be responsible for the safe and proper operation and navigation of its vessels at the Berth. The Customer shall obtain and maintain all specific licenses and permissions for discharge and handling of the Permitted Cargoes. A copy of such permissions and licenses shall be provided by the Customer to the Operator promptly and in no event later than two (2) Days prior to the scheduled date for utilisation of any Services.
	2. The Customer shall enforce strict access controls at the gangway on its Vessels whilst berthed at the Berth in order to prevent unauthorized access to the Project and the Vessels. The Operator will not be liable for any loss or damage suffered or incurred by the Customer (including, without limitation, any fines or penalties or the payment of expenses by the Customer on account of care, lodging, medical attention, security and repatriation) arising from the presence on board vessels of stowaways, or other unauthorized personnel.
	3. The Customer hereby agrees, acknowledges and undertakes that:

the Customer will be solely responsible for complying, and will comply, with all formalities, procedures, regulations, bylaws and guidance prescribed by any Governmental Authority which apply to the Permitted Cargo or Vessel and/or the use of Berth at all times while availing the Services. The Customer shall further ensure that any third party which it might instruct to enter the Port (including any sub-contractor, agent, employee or other party) is familiar with and agrees to be legally bound by such regulations, instructions or directions.

the Customer shall use reasonable skill and care when berthing the Vessel at the Berth.

that the Vessel is operated in compliance with all the Applicable Laws and international standards with respect to safety, stability, seaworthiness, fitness for purpose and security including, without limitation, regulations introduced pursuant to the ISPS Code.

it will bring the provisions of the TOB (including the limits, defences, exceptions, liberties and exclusions herein) to the attention of each Person who may be instructed by the Customer to enter the Port and Berth or otherwise deal with the Operator including any sub-contractor, agent, employee or other party instructed by the Customer and by receiving or using the Services from the Operator, or by using or entering the terminal, including by berthing any Vessel at the terminal, each such Person is deemed to have read, understood and agreed to the provisions of the TOB;

the Customer shall ensure that each Person referred above is familiar with, and that it follows, all Applicable Laws, and all instructions or directions issued by the Operator, the Operations Manager, any employee, Customer or authorised agent of the Operator, which relate to the use of the Berth and entry to the Port.

the Customer shall ensure that it and any third party which it might instruct to enter the Port (including any sub-contractor, agent, employee or other party) is familiar with and agrees to be legally bound by such regulations, instructions or directions.

if the Customer has appointed an agent, or if the Operator reasonably believes that the Customer has appointed an agent, in respect of the Services, the Customer, shall be deemed to have authorised such agent to act on its behalf in respect of all matters hereunder including to pay to or receive from the Operator, all sums due, unless the Customer notifies the Operator to the contrary at any time, and the Operator shall be entitled to act upon any instruction, request, notice or other communication from such agent without prior reference to the Customer;

it will immediately inform the Operations Manager of any occurrence or incident which might affect the safe and efficient operation of the Operator or other Persons using the Berth and take, at its own cost, such reasonable steps to control or eliminate any danger or inconvenience as may be required by the Operator. Without prejudice to the foregoing, the Customer, its Affiliates, officers, directors and employees shall indemnify and hold the Operator harmless from and against any costs, fines, claims, indemnities, expenses, damages or losses of whatever nature arising from such occurrence or incident unless the occurrence or incident has been caused by the negligence of the Operator.

all manifests, delivery orders, sub-orders, shipping notes/advices, consignment notes, documents of title, Permitted Cargo handling instructions and orders for any Services provided by the Operator which are necessary for the Operator's safe and efficient handling of the Permitted Cargo or Vessel and/or compliance with any obligation imposed by Governmental Authority or regulatory authorities or any similar regulations, rules or requirements must accompany (where required) the Permitted Cargo or Vessel and be lodged with the Operations Manager before the Services are required to be performed. Any order given verbally must be confirmed in writing; and

it shall comply with Port Conditions of Use.

* 1. In the event any modification is required by the Customer to the Berth for handling any Permitted Cargo, the terms and conditions of such modifications as may be mutually agreed (in writing) between the Parties. However, the permission for such modifications shall be obtained by the Customer from the Operator prior to the commencement of such modifications. The Operator shall have the right to refuse permission(s) for modification(s). Any costs, licenses and/or permissions in relation to setting up of such modifications shall be borne by and shall be to the sole account of the Customer. The Customer shall be responsible for coordination with the Operator/its representatives to perform works for such modifications and shall indemnify the Operator for any and all liability/loss/damages/expenses accruing/resulting from undertaking such modifications.
	2. The Customer shall be liable for all liabilities and obligations of its employees, contractors, etc under the TOB and relevant Berthing Approval.
	3. Subject to alternative arrangements being agreed in writing with the Operator, any standard shipping note, dangerous goods note (where appropriate), temperature control document, or other document accompanying the Permitted Cargo must specify the description of the Permitted Cargo, gross weight, any weight imbalances, cubic measurement, the name of any Vessel or port to which the Permitted Cargo is to be shipped (where appropriate), and the name and address of the Customer or company to whom charges are to be rendered.
	4. The Customer acknowledges and agrees that the Operator shall have no responsibility whatsoever for the failure of the Customer to comply with any Applicable Law.
	5. At all times when a Vessel is berthed at the Berth, the Customer shall ensure that:

the Vessel furnishes adequate lighting and safe ingress and egress (for the Operator's personnel);

the Vessel maintains appropriately qualified and experienced officers and crew aboard in order to maintain an alert watch and respond to emergencies and to enable the Operator to provide the Services.

the Vessel maintains engines in a state of readiness to respond to emergency situations and to avoid delays in vacating the Berth; and

the Vessel’s crew members adhere at all times to all health and safety rules of the Operator notified to the Customer from time to time.

1. **RISK TRANSFER AND ABANDONED CONTAINERS AND CARGO**
	1. The Containers shall cease to be deemed to be in the custody of the Operator:
		1. in respect of import Containers, when the Container, is (a) mounted onto the withdrawing truck or wagon by the Operator's cargo handling equipment for delivery to the consignee; or (b) attached to the withdrawing truck for delivery to the consignee; or (c) passing out of the terminal’s gate into the custody of the Person duly authorized to receive the Container/cargo according to the relevant equipment interchange receipt to be issued by the Operator; or (d) received by the Person duly authorized to take delivery of the Container/cargo according to the relevant equipment interchange receipt to be issued by the Operator;
		2. in respect of export Containers, when the Container, is (a) restowed on the Vessel's deck, or hold; or (b) on top of another Container on the Vessel (as from locking twist locks on board); or (c) on passing in the Container terminal’s gate according to the relevant equipment interchange receipt to be issued by the Operator, until stowing of the Container/cargo on the Vessel (locking twist locks on board);
		3. in respect of transshipment Containers, when the Container, is restowed on another Vessel's deck, hold or on top of another Container on another Vessel (as from locking twist locks on board).
	2. If the Customer does not pick up cargo or containers within the agreed timelines, including in case of a Force Majeure, the Operator may without notice to the Customer, subject to Applicable Laws, take measures and/or sell or dispose of the cargo and/or to abandon further Services and/or to store them ashore or afloat, under cover or in the open, at any place, whichever the Operator in his absolute discretion considers most appropriate, which sale, disposal, abandonment or storage shall be deemed to constitute full delivery under the relevant bill of lading. The Customer indemnifies the Operator against any reasonable additional expense so incurred. The Operator in exercising the liberties contained in this Article shall not be under any obligation to take any particular measures and shall not be liable for any loss, delay or damage howsoever arising from any action or lack of action under this Article.
2. **CONSIDERATION AND TERMS OF PAYMENT:**
	1. The Customer shall pay the Operator, the Payments when due.
	2. In the event the Customer fails to pay any Taxes in accordance with Applicable Law, the Customer shall indemnify, defend and hold the Operator harmless from and against all losses, liabilities, penalties, claims, costs, expenses, and interest payable or incurred by the Operator arising out of or in relation to such failure by the Customer.
	3. The Operator shall not perform any Services in the event the Customer has not made the Payments. If the Customer disputes any portion of the invoice/demand notes raised pursuant to a Berthing Approval, the Customer shall communicate its objection to the invoice within seven (07) Days from receipt and pay the portion of the invoice which is undisputed. The Customer will be deemed to have accepted all invoices for which the Operator does not receive timely objection. The Parties shall resolve any such Disputes expeditiously and in good faith in accordance with the TOB. Notwithstanding anything to the contrary, the Customer shall continue performing its obligations under the TOB and the relevant Berthing Approval during any such Dispute, including the Customer's obligation to pay all invoice amounts in accordance with the terms of the TOB and the relevant Berthing Approval.
	4. The Customer shall pay interest on all late payments, calculated at the rate as per the applicable Scale of Rates (“**Default Rate**” or “**Penal Interest**”). The Customer shall reimburse the Operator for all reasonable costs incurred by the Operator in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under the TOB and the relevant Berthing Approval or at law (which the Operator does not waive by the exercise of any rights under the TOB), if the Customer fails to pay any undisputed amounts when due, the Operator may, after issuance of a written notice to the Customer, and without any liability and by a written notice, (a) suspend the performance of further Services; or (b) terminate the performance of Services and the relevant Berthing Approval; or (c) withdraw discount(s)/rebate(s); or (d) exercise lien on cargo/Containers of the Customer.
	5. All containers and goods and all documents relating to containers and goods shall be subject to a particular and general lien respectively for charges due to the Operator in respect of such containers or goods from the Customer. If any charges are not paid when due, the containers or goods subject to such lien, may, subject to applicable mandatory laws, be sold and the proceeds applied in or towards satisfaction of the outstanding charges and the costs incurred by the Operator in such sale. Any sale of containers or goods by the Operator pursuant to this Article, may be conducted by private agreement, by public auction or otherwise in such manner as the Operator shall in its sole discretion determine in accordance with Applicable Laws and the Operator shall not be liable for any loss and/or damage to any person whatsoever as a result thereof. This lien shall be in addition to any statutory lien.
	6. The Parties agree that they shall not, and shall have no right, under the TOB and Berthing Approval, any other agreement, document or Applicable Law, to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to the other Party or any of its Affiliates, whether under the TOB and any Berthing Approval or otherwise, against any other amount owed (or to become due and owing) to it.
	7. The customer/owners/master of the Vessels which are proposing to utilize the Services shall pay vessel related charges directly to the Authority as per the Scale of Rates, (except berth hire charges in relation to the Terminal). For the avoidance of doubt, it is clarified that the Operator will not be liable for any failure of customer/owner/master the Vessel to pay any vessel related charges to the Authority.
3. **SCHEDULING AND VESSEL PASSAGE:**
	1. Customer shall notify the Operator regarding ETA (Estimated Time of Arrival) notice by email at least seven (07) Days prior, or in case the sailing time between the loading port to the Berth is less than one (01) Day, then, at least three (03) Days prior, or as soon as practicable, along with details of the Vessel, including the flag state, arrival draft, approximate move exchange, hazardous cargo information and any other information that the Operator may require to grant the Vessel a commercial and technical clearance, and the estimated arrival window of the Vessel at the Port.
	2. The user shall submit the berthing application request to the Operator twenty four (24) hours prior arrival of the Vessel. Operator shall then issue the confirmation notice to the Customer who shall then make necessary arrangements for the entry, berthing and exit of the Vessel at the Berth.
	3. The Operator shall approve the vessel identification advice by issuing a confirmation notice to the Customer (“**Berthing Approval**”) and shall make necessary arrangements for the entry, berthing and exit of the Vessel at the Berth.
	4. The Customer may avail of entry and exit of the Vessels at the Port in accordance with the provisions below, the Port Conditions of Use and the Port Regulations. The Customer shall consistently coordinate with the Port Authority for the entry and exit of the Vessels at the Port, and the Operator shall take reasonable measures required in order to avoid any unreasonable delay in entry of the Vessels from the entry point of the navigation channel till the Berth, and exit from the Berth to the exit point of navigation channel during outward movement of the Vessels, after the Customer has unloaded the Permitted Cargo from the Vessel and notified the Operator that such Vessel is ready to exit the Port.
	5. The Customer shall: (a) ensure that free pratique for the Vessel is granted to facilitate its berthing, and that customs formalities are completed to facilitate the issue of notice of commencement of discharge of Permitted Cargo from the Vessels; (b) plan the arrival of Vessels such that there is no bunching of Vessels and the Berth is utilized in a smooth manner; and (c) ensure that Vessels that arrive at the Port are of sound and seaworthy conditions so that the navigation channel and Berth are not blocked due to problems relating to vessel hindrances.
4. **SETTLEMENT OF DEMURRAGE:**

It is clarified that any demurrage payable by the Operator to any other vessel expected to arrive at the Port on account of a delay attributable to the Vessel or to the Customer shall be reimbursed by the Customer to the Operator.

1. **REPRESENTATIONS AND WARRANTIES OF PARTIES:**
	1. The Operator hereby represents and warrants to the Customer that:
		1. It is organized and validly existing under laws of applicable jurisdiction.
		2. It has obtained all consents, Approvals and authorizations under Applicable Laws for the valid execution, delivery and performance of its obligations. No further authorizations, consents, Approvals, filings or registrations with any Governmental Authority or any other party are required for the execution, delivery or performance of its obligations.
		3. The terms herein constitute the legal, valid and binding obligations of such Party enforceable in accordance with the terms of the TOB.
		4. Neither the execution, delivery or performance of obligations by the Operator, nor compliance by it with the terms and provisions hereof, will:
2. conflict with any Applicable Laws or the organizational or constitutional documents of the Operator; or
3. constitute a default under or result in the creation of a security interest over any of the Operator’s assets pursuant to the terms of any agreement, contract, arrangement or understanding to which the Operator is a party or that is binding on the Operator or any of its assets.
	* 1. It has not taken any action and nor have any other steps been taken or legal proceedings been initiated or, to the best of the Operator’s knowledge and belief threatened against it, for the winding up, dissolution, administration or reorganization of the Operator or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
		2. No action, litigation, arbitration or administrative proceeding before any court or agency or Governmental Authority has been initiated or, to the best of the Operator’s knowledge and belief, threatened, against the Operator, which could, in any way, adversely affect its business or result in its inability to perform its obligations under the TOB.
	1. The Customer represents and warrants to the Operator that:
		1. It is organized and validly existing under the laws of its applicable jurisdiction.
		2. It has obtained all consents, Approvals and authorizations under Applicable Laws for the valid execution, delivery and performance of its obligations. No further authorizations, consents, Approvals, filings or registrations with any Governmental Authority or any other party are required for the execution, delivery or performance of its obligations.
		3. It is either the owner of the Permitted Cargo or Vessel or that it is authorized by the owner and/or other Persons interested in, or entitled to possession of, the Permitted Cargo or the Vessel to accept the TOB not only for itself but also as agent and/or trustee for and on behalf of the owner or other Persons interested therein, or entitled to possession thereof;
		4. This terms herein constitutes the legal, valid and binding obligations of the Customer enforceable against it in accordance with the terms of the TOB.
		5. Neither the execution, delivery or performance of obligations by the Customer, nor compliance by it with the terms and provisions hereof, will:
	2. conflict with any Applicable Laws or the organizational or constitutional documents of the Customer; or
	3. constitute a default under or result in the creation of a security interest over any of the Customer’s assets pursuant to the terms of any agreement, contract, arrangement or understanding to which the Customer is a party or that is binding on the Customer or any of its assets.
		1. It has not taken any action and nor have any other steps been taken or legal proceedings been initiated or, to the best of the Customer's knowledge and belief threatened against it, for the winding up, dissolution, administration or reorganization of the Customer or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
		2. No action, litigation, arbitration or administrative proceeding before any court or agency or Governmental Authority has been initiated or, to the best of such Party's knowledge and belief, threatened, against the Customer, which could, in any way, adversely affect its business or result in its inability to perform its obligations under the TOB.
		3. Neither the Customer nor any of its directors, partners or members, as may be applicable, been declared and/or included in the list of defaulters of any bank and/or financial institution and/or any other organization; and
		4. It has never been convicted of any offence relating to fraud, misrepresentation, cheating, etc.
		5. the Permitted Cargo has been properly handled, unloaded and transported in accordance with all local, national or international legislation or regulations from time to time applicable and the codes of conduct, practice directions and regulations of the International Maritime Organization (unless otherwise specified in writing to the Operations Manager before the Vessel carrying the Permitted Cargo is berthed at the Berth).
		6. its employees (and those of any agents or independent contractors it may engage) are trained and competent to carry out the tasks at any time assigned to them in relation to the giving of any instructions to the Operator (whether such instruction is given in writing, verbally or by any electronic or any other means whatsoever) and that such Persons have the full authority to give such instructions or input such information;
		7. all the documentation and information provided by or on behalf of the Customer in relation to the Permitted Cargo and/or Vessel is full and accurate and is sufficient to enable the Operator to provide the Services safely and in full compliance with Applicable Law.
		8. none of its activities conducted whilst at the Berth violate any applicable anti-slavery and human trafficking laws, statutes, regulations and codes in force from time to time.
		9. it has complied with all Applicable Law relating to the handling, unloading and transportation of the Permitted Cargo.
	4. Each Party hereby represents and warrants to the other Party that:
		1. Neither the Parties nor any of their Affiliates or any of their respective directors, officers, employees, agents, representatives or other Persons acting for or on their behalf (“**Group Persons**”) has: (i) made any bribe, influence payment, kickback, payoff, benefits or any other type of payment (whether tangible or intangible) that would be unlawful under any applicable anti-bribery or anticorruption (governmental or commercial) laws (including, for the avoidance of doubt, any guiding, detailing or implementing regulations), including Applicable Laws that prohibit the corrupt payment, offer, promise or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any government official or commercial entity to obtain a business advantage; (ii) been in violation of any Anti-Bribery Law, offered, paid, promised to pay, or authorized any payment or transfer of anything of value, directly or indirectly, to any person for the purpose of (A) influencing any act or decision of any government official or private entity in his/their official capacity, (B) inducing a government official or a private entity to do or omit to do any act in relation to his lawful duty, (C) securing any improper advantage, (D) inducing a government official or a private entity to influence or affect any act, decision or omission of any governmental authority or such private entity, or (E) assisting any of the Group Person, or any agent or any other Person acting for or on behalf of a Group Person, in obtaining or retaining business for or with, or in directing business to, any Person; or (iii) accepted or received any contributions, payments, gifts, or expenditures that would be unlawful under any Anti-Bribery Law.
		2. Each of the Group Person, as applicable, has instituted and maintains policies and procedures reasonably designed to ensure compliance in all material respects with the Anti-Bribery Laws.
		3. There are no current or pending internal investigations, or third-party investigations (including by any governmental authority), or internal or external audits, that address any material allegations or information concerning possible violations of the Anti-Bribery Laws related to the Group Persons.
		4. The Group Persons (i) are, and have been, in compliance with all applicable Anti-Money Laundering Laws, Sanctions, and international trade laws, and (ii) have obtained all required licenses, consents, notices, waivers, approvals, orders, registrations, declarations, or other authorizations from, and have made any material filings with, any applicable Competent Authority for all activities and transactions, including for the import, export, re-export, deemed export, deemed reexport, or transfer required under the international trade laws and Sanctions and the provision of financial services required under Anti-Money Laundering Laws. There are and have been no pending or, threatened, claims, complaints, charges, investigations, voluntary disclosures or actions against any of the Group Persons related to any Anti-Money Laundering Laws, Sanctions, or international trade laws.
		5. None of the Group Persons, (i) is, or has, been a Sanctioned Person or a Restricted Person, or (ii) has transacted business directly or indirectly with any Sanctioned Person or Restricted Person or with or in any Sanctioned Jurisdiction, in each case in violation of applicable Sanctions or international trade laws.
		6. Each of the Group Persons, as applicable, has in place written policies, procedures, controls, and systems designed to ensure compliance with all applicable Anti-Money Laundering Laws, Sanctions and international trade laws.
4. **HEALTH, SECURITY, SAFETY AND ENVIRONMENTAL (HSSE)**
	1. The Operator shall perform the Services in a manner that ensures adequate protection for its employees in full compliance with all applicable international and national laws, rules and regulations and shall - to the extent the safety is in the Operator’s control - use best efforts to ensure the same level of protection for the Customer’s employees, agents and contractors at the Berth.
	2. The Parties shall strive for a continuous improvement of HSSE performance and ensure that management of HSSE is an integral and visible part of their work planning and execution processes.
	3. The Operator shall monitor and evaluate its safety performance and take such actions as are required or appropriate to rectify and improve its overall safety performance. The Customer agrees to adhere to any ad-hoc safety measures that may be imposed by the Operator in case of a safety incident.
	4. The Customer represents that its vessel and vessel equipment is in safe working order and, if the Operator detects, unsafe conditions the Customer shall as soon as possible in consultation with the Operator remedy such conditions. The Operator is entitled to suspend operations related to a Vessel in case of any unsafe conditions and request evidence that the unsafe condition was remedied.
	5. The Customer will ensure that its employees, agents and contractors adhere to the HSSE regulations and instructions in force at the Berth, as prescribed by Applicable Laws and regulations and by the Operator.
5. **INSURANCE**
	1. Each Party shall, at its own expenses, procure and maintain policies of insurance covering:
	2. any liability assumed by it under the TOB; and
	3. any requirements by Applicable Law, including public and third-party liability.
	4. The Operator will be under no obligation to maintain insurance for Permitted Cargo, goods, Containers or Vessels. In the event, the Operator incurs any costs pertaining to the Permitted Cargo, goods, Containers or Vessels at the Port, then such costs (which shall be notified by the Operator to the Customer) shall be reimbursed to the Operator by the Customer, upon the Operator furnishing necessary supporting documents to the Customer. In the event of any claim to be made for insurance in relation to any incident or circumstance or event in relation to the Permitted Cargo, goods, Containers or Vessels, the Customer shall provide all assistance, information and documents which shall enable the Operator to make such claim under the respective insurance policies.
	5. The Customer shall maintain or shall cause its vessels and their equipment, appurtenances, gear and machinery to be maintained in a thoroughly fit and seaworthy condition at all times. Vessels shall be kept continuously in class in accordance with the rules of the vessels' classification society. The Customer shall maintain the following insurances with insurers of international standing (which shall include any members of the international group of protection and indemnity clubs but also any other insurers acceptable to the Operator) and shall furnish to the Operator (if requested) certificates or copies of policies evidencing such insurance:
6. hull and machinery insurance, in accordance with ITC hull Clauses, 1983 or equivalent conditions, in an amount no less than the full market value of the Vessel; and
7. Protection and indemnity cover on standard terms and customary limits with a member of the International Group of P&I Clubs.
	1. The Customer must take out and maintain with insurers of international standing (which shall include any members of the international group of protection and indemnity clubs but also any other insurers acceptable to the Operator with a minimum credit rating of BBB), all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator including protection and indemnity club insurances.
	2. Whenever required by the operator, the Customer shall provide the Operator with a copy of the certificate of insurance confirming that the requirements have been complied with. Such request or absence of such a request shall in no way be construed as waiving the Customer's obligations to arrange insurance required by Applicable Law.
	3. The Operator reserves the right to not allow those Vessels to berth, which do not have adequate insurance in respect of the Vessels, from a club being a member of the international group of protection & indemnity clubs, together with insurances adequate to cover its liabilities under the TOB.
	4. Insurance must be maintained without any lapse in coverage during the commercial arrangement between the Parties.
	5. No insurances or the limits of such insurances shall be construed in any way as a limit of either Party's liability hereunder.
8. **CHANGE IN LAW:**
	1. In the event there is a Change in Law, and which results increase in the amounts payable by the Customer to the Operator, then such additional cost shall be to the Customer’s account. Provided that in the event there is any such increase in cost, then the Parties shall mutually discuss and agree upon measures to mitigate the effect of such Change in Law.
	2. The Operator shall be required to give a notice to the Customer of any Change in Law by providing evidence of such change as against the Applicable Laws as on the Execution Date.
9. **FORCE MAJEURE:**
	1. Force Majeure
		1. Unless otherwise defined under the TOB, Force Majeure means any of the following events or circumstances which (or any consequences of which) adversely affects the performance by either Party (the “**Affected Party**”) of its obligations under the TOB, which events or circumstances are beyond the reasonable control of Affected Party and which the Affected Party could not have prevented by good industry practice or by the exercise of reasonable skill and care:

(a) War (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riots, insurrection, civil commotion, act of terrorism or sabotage, in each case, occurring in India.

(b) Nationwide strikes and lockouts affecting the Services, which would in turn result into a material adverse effect on the Project and not arising out of disputes between the Parties or any Affiliate or any of their employees, sub-contractors or agents.

(c) Any exercise of a Competent Authority of India’s sovereign or executive prerogative, the expropriation or compulsory acquisition, confiscation, requisition or seizure of all or a portion of the Project by a Competent Authority, provided that, this Article shall not apply where such act (including expropriation or compulsory acquisition) constitutes a remedy or sanction lawfully exercised as a result of a breach by the Affected Party of any Applicable Law of India or Directive;

(d) Acts of God, such as epidemic, lightning, earthquake, cyclone, whirlwind, flood, tempest, storm, drought, lack of water or other unusual or extreme adverse weather or environmental conditions, or action of the elements, meteorites, objects falling from aircraft, pressure waves caused by aircraft or aerial devices travelling at supersonic speed, fire or explosion, chemical or radioactive contamination or ionising radiation.

(e) Any decision or order of a court or tribunal in India which has the effect of restraining all or any of the activities concerning the Services, except to the extent that it constitutes a remedy or sanction lawfully exercised as a result of a breach by the Affected Party of any Applicable Law or Directive. In this connection, due regard shall be had to the final determination of a court or tribunal and the question as to breach by the Affected Party of any Applicable Law or Directive shall be determined on such basis.

* 1. Force Majeure Exclusions

Unless otherwise set out in the TOB, for the avoidance of doubt, Force Majeure shall not include the following conditions (which list is not intended to be exhaustive or limitative), except to the extent that the condition is the consequence of an event of Force Majeure:

(a) unavailability, late delivery, or changes in cost of the equipment, materials, spare parts, fuel or consumables.

(b) delay, default or failure (direct or indirect) (financial or otherwise) in the performance of the sub-contractors or by inefficiencies on the part of the Parties or their respective sub-contractors.

(d) non-performance or late performance caused by, or connected with, the Affected Party’s (i) negligent or intentional acts, errors or omissions; (ii) failure to comply with an Applicable Law or Directive; or (iii) breach of, or default under, the TOB.

(e) weather conditions reasonably to be expected for the climate in the geographic area of the site, including the monsoon season.

(f) any site condition or event arising therefrom; or

(g) any strikes or labour disturbances at the facilities of the Affected Party.

* 1. Notice of Occurrence

Where an Affected Party claims relief on account of Force Majeure then, the obligations of the Affected Party under the TOB shall be suspended to the extent that such obligation is affected by an event of Force Majeure provided that the Affected Party shall immediately give the other Party a written notice describing the particulars of the occurrence of the event of Force Majeure within twenty four (24) hours of the occurrence of the event of Force Majeure. The Affected Party shall:

(a) use its best efforts to minimise the effects of Force Majeure and remedy any inability to perform due to an event of Force Majeure.

(b) provide weekly reports to the other Party regarding its progress in overcoming the adverse effects of the event of Force Majeure.

(c) as soon as reasonably practicable after claiming such relief, provide the other Party with written notice containing such information as may be reasonably required to justify the claim for relief due to Force Majeure.

(d) ensure that any claims in respect of physical loss or damage resulting from the event constituting Force Majeure which are available against insurers pursuant to any insurances maintained by the Affected Party are made as soon as is reasonably possible and that the proceeds of any such insurance claim are applied to remedy the effects of the event constituting Force Majeure as soon as is reasonably possible; and

(e) at its own cost and expense, take all steps required to restore its ability to perform its obligations under the TOB as soon as is reasonably possible, provided that, the Affected Party shall not be obliged to take any steps which would not be in accordance with good industry practice or beyond its control.

When the Affected Party is able to resume performance of its obligations under the TOB, it shall promptly give the other Party written notice to that effect provided that in no event shall the suspension of performance be of greater scope and of longer duration than is required by the event of Force Majeure.

* 1. In the event, the Force Majeure continues to subsist for a period of ninety (90) Days from the issuance of the FM Notice, then the Parties will have a right to mutually terminate the commercial arrangement between the Parties. The Customer will be required to pay all amounts due and payable by the Customer to the Operator for the Services provided by the Operator until such termination of Services.
1. **INDEMNIFICATION:**
	1. Subject to the limitations set forth in the TOB, each Party shall defend, hold harmless and fully indemnify the other Party, and its respective officers, directors, agents, employees, affiliates, owners, parents, subsidiaries, successors and assigns against and from any and all actions, causes of action, claims, suits, debts, dues, sums of money, judgments, damages, expenses (including attorney’s fees) or liability of any kind or nature whatsoever, relating to

(a) loss or damage to goods, containers, equipment or property, or

(b) injury or death to any person,

to the extent such liability arises out of or relates to any negligent act or omission of a Party, its employees, representatives, agents, subcontractors or customers resulting from or in connection with the performance of obligations under the TOB.

* 1. It is hereby clarified that the Operator shall not be liable for loss of or damage to any Vessel or Permitted Cargo, unless, in respect of the Vessel, the Customer can establish that the loss or damage was directly caused by the Operator or any other party for whom the Operator is responsible whilst the Vessel was at the Berth. If the loss or damage was contributed to by the act or omission of the Customer or any other Person, the Operator shall be exonerated from liability to the extent that such act or omission contributed to the loss or damage.
	2. The Customer shall ensure that all its carriage contracts incorporate a clause to the effect that the Operator will have the benefit of the provisions, including the law and jurisdiction provisions of that carriage contract to the extent such provisions benefit the Customer. The Operator authorises, empowers and directs the Customer to act, and the Customer hereby agrees to act, as trustee and/or agent for the Operator for the limited purpose only of complying with this Article. In addition to being able to rely on the TOB, the Operator has the right to avail itself of and invoke any limitation or exclusion of liability, immunity, defence, right, remedy and/or law and jurisdiction clause contained in the carriage contract as if the Operator were the carrier and the Customer were the merchant referred to in the carriage contract.
	3. The indemnity obligation of the Parties is independent of any other obligations, including any obligation to pay damage and shall not limit any of the rights of any Party available under Applicable Laws or the right to claim indemnity.
1. **LIMITATION OF LIABILITY:**
	1. LOSS OR DAMAGE TO GOODS: The liability of the Operator for any loss or damage to goods, to the extent caused by fault or negligence on the part of the Operator’s employees while engaged in the delivery, receiving, watching, or storing of such goods as part of Services shall be limited to

Single incident or series of incidents arising from a common cause – Not more than USD Five Million (USD 5,000,000).

* 1. LOSS OR DAMAGE TO CONTAINERS: The Operator shall only be liable for loss of, or damage to, any Container or other Customer equipment while they are in the custody or control of the Operator and to the extent the same was caused by the negligence or wilful misconduct of the Operator and such liability shall be limited to the lesser of:
	2. the reasonable repair cost of the Container or other equipment damaged; and
	3. the depreciated value of the Container or other equipment lost or damaged.

* 1. LOSS OR DAMAGE TO VESSEL: The maximum aggregate liability of the Operator during the commercial arrangement between the Parties, in respect of loss or damage to a vessel shall be limited to Not more than USD Three Million (USD 3,000,000)
	2. Overall Liability Cap
		1. The maximum aggregate liability of the Operator in case of losses and/or damages under any Article which arise out of a single incident or series of connected incidents, regardless of whether such losses and/or damages are sustained by more than one person, shall in no circumstances exceed USD Five Million (USD 5,000,000) (“**Overall Liability Cap**”). Where, in respect of a single incident or series of connected incidents, the losses and/or damages are sustained by more than one person, the Overall Liability Cap shall be applied to all claims brought by each person on a pro-rata basis (i.e., based on the proportion each person's claims bear to the total amount claimed by all such persons).
		2. To the extent permitted by law, the Customer hereby agrees, for and on behalf of itself, and the Vessel owner, to waive any statutory right to limit liability for personal injury or property damage by establishing a limitation fund under any applicable international convention or national law governing the liability of owners and/or operators of seagoing Vessels, including the Limitation Conventions. The Customer hereby warrants that it has the authority to bind the Vessel owner to such waiver of limitation. For the purpose of this Article, “Limitation Conventions” means the Convention on Limitation of Liability for Maritime Claims 1924, the Convention on Limitation of Liability for Maritime Claims 1957, the Convention on Limitation of Liability for Maritime Claims 1976, and the 1996 Protocol thereto.
	3. Liability Exclusions
		1. In no event shall the Operator be liable to the Customer for:
1. any for any loss of profit, loss of market share, loss of goodwill, loss of future or anticipated sales, loss of production or factory “down time”, damages, costs or expenses incurred or payable by the Customer to any third party (in each case whether direct or indirect) or any special, punitive, consequential or indirect losses or damages of any kind whatsoever, it being the express intention of each Party that recovery of any such damages is prohibited with respect to claims arising from or related to the TOB. This includes any and all liability resulting from any delayed provision of the Services if not specifically agreed differently between the Parties.
2. for any loss, damage, delay, claims, non-performance, error or omission whatsoever (including for any loss or damage to Permitted Cargo and/or Vessel) during the provision of Services, arising directly or indirectly from any Force Majeure or Adverse Weather Conditions.
	* 1. The Customer shall not be entitled to bring any claim howsoever arising (including negligence and wilful misconduct) unless and until the amount of any such claim less than USD Six Hundred ($600) in relation to damage to any Container, and for an amount less than USD Twelve Thousand ($12,000) for any other damage (“**De Minimus Amount**” or “**Liability Floor Amount**”).
		2. Save as set out in the TOB, the Operator or any other person or party shall not be liable for loss of or damage to any goods, container(s) or vessel howsoever arising (whether caused by negligence or otherwise). The defences, exclusions and limits of liability provided for in the TOB shall apply in any claim against the Operator whether the claim be founded in tort, bailment, contract, breach of express or implied warranty or otherwise and even if the loss, damage or delay arose as a result of negligence, wilful misconduct or fundamental breach of contract.
		3. No claim may be pursued by either the Operator or the Customer (“**Claimant**”for the purpose of this Article) against the other (“**Recipient**”for purposes of this Article) and the Recipient will be discharged of all liability whatsoever and howsoever, unless:
3. in the case of an event which customarily requires a survey of damage, the Claimant must notify the Recipient as soon as reasonably practicable the Claimant becomes aware of the event. Failure to do so may release Recipient from liability with regards to any claim.
4. the Recipient has been advised in writing of the event or events giving rise to the claim within sixty (60) Days of their occurrence; and
5. proceedings for a Dispute are commenced and written notice thereof is received by the Recipient, within one (1) year of the occurrence of such event or events.

Neither of the Parties will be liable to the other Party for any losses arising from or in connection with the TOB under any theory of liability (whether in contract, in tort, or otherwise), if such losses could have been avoided had the Claimant made reasonable efforts to mitigate them. Notwithstanding any other provision herein, the Claimant shall, at all times, take all reasonable steps to minimize and mitigate any loss, damage and/or costs and expenses for which the Claimant is entitled to bring a claim against the Recipient under the TOB.

1. **NOTICES:**

Any notice, report, certificate or other communication to be given to either Party shall be served by sending the same by electronic mail/facsimile transmission (with a confirmation copy by couriers or by hand delivery only in case of major issues relating to the order, viz., notices of tests, arbitration, making a claim, etc.) to or by leaving the same at, respective registered addresses or such other addresses as may be applicable, in writing to the Operator and upon obtaining proper receipt of the same.

1. **DISPUTE RESOLUTION AND ARBITRATION:**
	1. Any dispute, difference, claims or matter in question between the parties arising out of or related to Agreement (a “**Dispute**”) shall be resolved pursuant to the procedures set forth in this Article:
		1. either Party shall provide notice to the other party of the existence of the Dispute and clearly stating that it is a Dispute notice.
		2. a senior representative from each party must meet and use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions, within thirty (30) Days of the delivery of the Dispute notice.
	2. If the Dispute is not settled within thirty (30) Days of the date of notification of the Dispute (or any other period agreed to in writing between the parties), either party may, by written notice to the other, refer the Dispute to arbitration in accordance with the following procedures:
		1. the proceedings shall be conducted in accordance with the Arbitration and Conciliation Act, 1996 (“**Act**”).
		2. A sole arbitrator shall be mutually appointed in accordance with the Act.
		3. the seat and place of the arbitration shall be Mumbai and any and all awards and other decisions shall be deemed to have been made there.
		4. the decision or award of the arbitration panel shall be in writing and the language of arbitration shall be English.
		5. the fees and expenses of the arbitrators shall be borne equally by the Parties unless otherwise modified by the award; and
		6. A determination or award resulting from arbitration pursuant to this Article shall be final and binding on the parties and may be enforced in any court of competent jurisdiction.
2. **GOVERNING LAW AND JURISDICTION:**

This TOB shall be construed in accordance with and governed by the laws of India.Each Party submits to the jurisdiction of the courts in Mumbai.

1. **AMENDMENT:**

The Operator reserves the right to amend the TOB. It is understood and agreed that the TOB as on the date that the Customer shall avail the Services shall apply and govern the commercial arrangement between the Operator and the Customer.

1. **ASSIGNMENT AND SUB-CONTRACTING:**
	1. The Operator may, at its discretion, arrange for the Services or any part thereof, to be carried out by one or more sub-contractors or agents on any terms whatsoever. Where such a sub-contractor is appointed at the request of the Customer, the Operator shall have no liability for the acts or omissions of sub-contractor.
	2. The TOB shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns/ permitted assigns. The Customer shall not without the prior written consent of the Operator assign to any Person any benefit of or obligation under the TOB in whole or in part. The Operator shall have the right, in its sole discretion, to assign in the name of and/or assign/novate/grant security interest in its rights and obligations in the TOB to (i) an associate company; and/or (ii) parties who provide financing to the Operator for the project or persons nominated by such parties providing financing to the Operator (“**Lenders**”) (the parties set out in (i) and (ii) are hereinafter collectively referred to as the “**Assigns**”). The Operator can assign all its rights, title, benefits, claims and interests in the commercial arrangement between the Parties in favour of its Lenders.
2. **AGENT:**

The Customer may, subject to prior notification in writing to the Operator, appoint an agent in respect of the Services provided by the Operator pursuant to this TOB ("**Agent**”), in which event, the Customer shall be deemed to have authorised the Agent to act on the Customer's behalf in respect of all matters hereunder including to pay to or receive from the Operator all sums due under this TOB unless the Customer notifies the Operator to the contrary at the time of such appointment or any time thereafter and:

1. The Operator shall be entitled at any time, to act upon any instruction, request, notice or other communication from the Agent without prior reference to the Customer and to receive from and to pay to the Agent any sums due (including any rebate).
2. Any payment made by the Operator to the Agent shall be held by the Agent in trust for the Customer and the receipt of the Agent of such payment shall be a full and sufficient discharge of the Operator in respect of such payment.
3. Any payment made by the Operator to the Agent shall only be made to the Agent for the time being when such payments fall due without any apportionment or deduction whatsoever with any other person.
4. The power granted to the Operator under this Article above shall continue until the Operator receives notice from the Customer to cease acting upon such communication or to cease the receipt and/or making of such payments from and to the Agent thereafter.
5. **NON-RELIANCE:**

Each Party expressly warrants and represents that no promise or agreement, not expressed herein, has been made to it by any other Party, or any Party’s respective affiliates, counsel, or any other interested party with respect to the terms set forth in the TOB, and that such Party is not relying upon any statement or representation of any agent of any other Party to the TOB or any Party’s respective affiliates, counsel, or any other interested party. Each Party is relying on its own judgment in this matter.

1. **NO WAIVER:**

The failure of a Party to enforce at any time any of the provisions of the TOB or any right in respect thereto or to exercise any options herein provided shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the TOB. The exercise by a Party of any of its rights herein shall not preclude or prejudice such Party from exercising the same or any other right it may have hereunder. Any waiver with respect to an obligation or right of a Party contained herein shall be in writing and signed by the Party benefiting from such obligation or holding such right.

1. **INDEPENDENT CONTRACTOR:**
	1. The TOB and the Berthing Approvals between the Parties are on a principal-to-principal basis and shall not create a partnership or agency or employer-employee or principal-agent relationship between them. It is further clarified that in the event any other writing or agreement or arrangement, oral or written, between the Parties is contrary to this Article, this Article shall prevail.
	2. Each Party confirms it is acting on its own behalf and not for the benefit of any other person. The terms and provisions of the TOB and any Berthing Approvals are intended solely for the benefit of the Parties and their respective successors and permitted assigns, and the Parties do not intend to confer third party beneficiary rights upon any other Person.
2. **SEVERABILITY:**
	1. Any determination by a court, administrative board or other proceeding of a Competent Authority that any article, section, part, provision, term or part of the TOB is illegal, unenforceable, in conflict with any law or contrary to public policy shall not in any manner affect the validity of the remaining articles, sections, provisions, terms and parts of the TOB. In such event, the Parties shall, by amendment of the TOB, properly replace such provision by a reasonable new provision or provisions which, as far as legally possible, shall approximate what the Parties intended by such original provision and the purpose thereof.
	2. If any legislation whether national or international is compulsorily applicable and cannot be derogated from, the TOB shall, in so far as possible, be construed in accordance with such legislation. If any part of the TOB is found by any court of competent jurisdiction or tribunal to be contrary to such legislation, then such term of the TOB shall (a) be deemed to be independent of the remainder of the TOB and be severable and divisible therefrom, and its invalidity, unenforceability or illegality shall not affect, impair or invalidate the remainder of the TOB or any part thereof; and (b) continue to be applicable to and enforceable to the fullest extent permitted by law against any Person and circumstances other than those as to which it has been held or rendered invalid, unenforceable or illegal.
	3. Nothing in the TOB shall operate to limit or deprive the Operator of any statutory protection, defence, exception or limitation of liability authorised by any Applicable Law, and the Operator shall have the full benefit of such laws, statutes or regulations.
3. **NO THIRD-PARTY BENEFICIARIES:**

The TOB and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of any other Person except as set out herein.

1. **COMPLIANCE:**
	1. Either Party shall not, directly or indirectly, in relation to the TOB give, promise, attempt to give or in any way facilitate, the giving of anything of value, including but not limited to, by transferring all or part of the remuneration payable to any person for the purpose of effecting any of the following:
2. to secure an improper advantage for either Party, or
3. to induce or influence any person to take any action or refrain from taking any action to obtain or retain business, or
4. inducing or influencing any person to use his/her influence with any Government or public international organisation, or any department, agency or other instrumentality thereof, for any such purpose.
	1. An improper advantage means an advantage that is not legitimately due. For the purpose of clarity, no account should be taken of the fact that such actions may be, or perceived to be, customary or officially tolerated.
	2. Either Party has established processes and maintains policies and procedures to prevent violation of this Article. If either Party breaches any of its obligations or representations in this Article, other Party may terminate the commercial arrangement between the Parties with immediate effect, without incurring any liability and each Party shall defend, indemnify and hold other Party harmless from any fines, penalties and all associated expenses arising out of or resulting from the violation by such Party of any of its obligations in this Article.