

Version 1012

**GENERAL TERMS AND CONDITIONS
FOR SHIPPING LINES
AND VESSEL OPERATORS**

**For the
Provision of Terminal Services
at
DP WORLD CALLAO SRL's
"Muelle Sur" Terminal
at the port of
Callao, Peru**

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SECTION 1: INTRODUCTION

PREAMBLE

This document incorporates the General Terms and Conditions for the provision of Berth, Stevedoring, and other Terminal Services at DP WORLD CALLAO SRL, henceforth referred to as “**The Operator**”, primarily at The Operator’s facility, known as the New Container Terminal “Muelle Sur” in the Port of Callao, Peru; and...

...Any Shipping Line; Vessel Owner –whether declared, disponent, or beneficial; Vessel Operator – whether direct or indirect; Vessel Charterer –whether on voyage, time, afreightment or any other such contractual form; Vessel Slot Charterer –whether Slot or Partial charterer, or Space charterer, and whether on spot or long term basis; Vessel Lessors or Lessees; Vessel Mortgage Holders, or holders of any other lien or guarantee over the Vessel; Vessel Sharing Agreement Partners or Joint Service/Route Consortium Members; Vessel Managers; Vessel Administrators –judicial or otherwise; Vessel Command and Crew; Vessel Agents; and in general, any person or entity having direct or indirect control of a vessel calling at the Operator’s facility or requiring services from The Operator; henceforth collectively referred to as “**The Customer**”.

Where a specific and individual contract or “Terminal Services Agreement” exist duly signed and executed between **The Customer** and **The Operator**, said agreement shall take precedence over these terms and conditions.

These Terms and Conditions are deemed agreed, accepted, executed, valid, applicable, and legally binding, by the sole fact of **The Customer**’s vessel requiring berth or berthing at, **The Operator**’s facility, or requiring any other service from The Operator. These Terms and Conditions shall be henceforth referred to as “**This Agreement**”.

This Agreement may be modified from time to time at the sole discretion of **The Operator**, without prior notice, consent, or formality, other than:

- It shall be of general applicability,
- It shall be publicly accessible at the Operator’s webpage, and shall be made accessible to The Customer by printed or other reasonable means, upon request.
- Any changes, additions, or modifications shall be effective from the date of publishing and not retroactively to events occurring prior the changes are effective.

Where Laws and Regulations, or Government Authorities Resolutions, describe, modify, contradict, or specifically regulate differently, matters included in **This Agreement**, then the former shall take precedence over the latter.

BACKGROUND

The Operator supplies the Terminal Services.
The Customer requires the Terminal Services.
This Agreement:

- a) defines those Terminal Services the Operator will supply to Cargo, Containers and Vessels owned, chartered, operated, leased or otherwise under the control of the Customer at the Port;

- b) states the terms on which the Operator will supply and the Customer will acquire those Terminal Services.
- c) is governed by the laws of Peru in the matters subject to the exclusive jurisdiction of OSITRAN or any other Peruvian authority.
- d) in all other matters, is governed by the laws of England and in respect of each such matter each Party submits to the jurisdiction of the courts of England for the purposes of enforcement of any arbitral award obtained in accordance with this Agreement;

[END OF SECTION]

SECTION 2: GENERAL TERMS & CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Agent means the agent(s) of the Customer appointed in accordance with clause 23.

Arrive or **Arrival** means the arrival of a Vessel at the Terminal.

Berthing Window or **Berthing Window Plan** means the timings specified by The Operator, at which a Vessel is to Arrive at Berth and complete cargo operations. Cargo operations are deemed to be completed when the lashing gangs have left the Vessel.

Cargo means any goods, merchandise or other property whatsoever, whether or not transported in a Container, in respect of which the Operator provides the Terminal Services.

Concession Contract means the Concession Contract to operate the Terminal, dated July 24, 2006, entered into between the Republic of Peru and the Operator, as amended from time to time.

Container means any container, flat, bolster or other unit conforming with ISO dimensional standards for international shipping and which is owned, leased, chartered, managed, operated and/or used by the Customer.

Customer's Visitors means all employees, agents, subcontractors and any other person whom the Customer may direct or invite to enter the Terminal.

EDI means electronic data interchange between the Parties.

EDIFACT means the United Nations standards for Electronic Data Interchange for Administration, Commerce and Trade.

Facility Security Plan means the security plan established by the Operator in relation to the operation of the Terminal.

Force Majeure Event means any extraordinary and unpredictable event or circumstance or combination of events or circumstances whenever occurring which in each case:

- (i) is beyond the reasonable control of the affected Party;
- (ii) is unavoidable by the exercise of due diligence; and
- (iii) actually prevents, wholly or in part, the performance of a Party's obligations under this Agreement.

This may include, but is not limited to; acts of God, acts of public enemies, war (whether declared or undeclared, internal or external), restraint of governments, princes or peoples of any nation, riots, insurrections, acts of terrorism, civil commotion, acts of nature such as

floods, fire, storms, earthquakes, tidal waves or tsunamis; trade restriction, blockade, labour dispute, strike or shortage; civil commotion, curfew, pressure waves caused by aircraft or other devices, meteorites, epidemic, plague, quarantine or expropriation, confiscation or nationalisation of, or any limitation placed upon, terminal assets by government authority.

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from:

- (a) in relation to the carriage of containerised and un-containerised cargo by sea, an experienced shipping operator; and
- (b) in relation to Terminal Services, an experienced port terminal operator, under the same or similar conditions.

Hazardous Cargo means Cargo of any kind classified by the International Maritime Organisation or International Maritime Dangerous Goods Code as hazardous.

ISPS Code means the International Ship and Port Facility Security Code forming part of the Safety of Life at Sea (SOLAS) Convention of the International Maritime Organisation.

Laws means all applicable mandatory laws, regulations and international conventions, including the Concession Contract.

Marks means a Party's name, business name, trade name, trademark, service mark, logo, or other indication of brand whether owned and/or controlled.

OSITRAN means the Peruvian regulatory authority of transport infrastructure.

Party means a party to this Agreement and includes that Party's successors and permitted assigns and **Parties** shall have a corresponding meaning.

Performance Standards means the specified standards against which the Operator and Customer are measured under the terms of this Agreement.

Peruvian New Soles or Soles or PEN or "S/." means the lawful currency of the Republic of Peru.

Point of Entry means the zone regulated by the Peruvian Customs Authority where it is allowed performance and/or execution of any action intended to clear goods for import as per the Peruvian General Customs Law or any other Peruvian customs regulations.

Rates means the prices charged by the Operator and agreed with the Customer in respect of Terminal Services rendered by the Operator under this Agreement as set out in Appendix 4.

Terminal or **Berth** means such wharf area within the Port owned, leased, operated or managed by the Operator at any time during the term of this Agreement, together with adjacent areas in which the Operator provides the Terminal Services.

Terminal Services means the services and/or facilities to be provided at the Terminal to the Customer as set out in the Agreement including all such other services which may be agreed between the Parties from time to time.

TEU means twenty-foot equivalent unit and in calculating TEUs, a 20' Container shall comprise one (1) TEU, a 40' Container shall comprise two (2) TEUs, and a 45' Container shall comprise two point two five (2.25) TEUs.

Strings means those container shipping trades included in Appendix 3, any or all of which may be changed from time to time by mutual agreement, not to be unreasonably withheld.

SUNAT means the Peruvian Tax and Customs Authority.

US Dollars or **USD** means the lawful currency of the United States of America.

Vessel means any ship which is cellular, fitted with cell-guides below decks and is otherwise fitted for the carriage of Containers, which calls at the Terminal and of which the Customer (or any subsidiary or managed company of the Customer) is the owner, charterer or disponent owner.

Vessel Operator means the operator in control of any vessel at the Port.

1.2 Interpretation

(a) In this Agreement unless the contrary intention appears:

- (i) a reference to a part, clause, schedule, annexure or appendix is a reference to a part or clause of or schedule, annexure or appendix to this Agreement and references to this Agreement include any recital, schedule, annexure or appendix;
- (ii) a reference to this Agreement or another instrument includes any variation or replacement of either of them;
- (iii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (iv) the singular includes the plural and vice versa;
- (v) the word person includes an individual, a firm, a body corporate, an unincorporated association or an authority;
- (vi) a reference to a named person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (vii) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (viii) a reference to a day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later.

(b) This Agreement is not intended to nor shall it create any rights, claims or benefits enforceable by any person that is not a party to it. Accordingly, save to the extent expressly set out in this Agreement, no person shall derive any benefit or have any right or entitlement in relation to this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

2. TERM

(Not Applicable)

3. INTENDED SCOPE OF CONTRACT

3.1 Extension to Group Companies

The Terms and Conditions of This Agreement extend to all parties as described in Section 1 - Preamble, including Group Companies, Affiliates, Subsidiaries, or surviving entities of The Customer.

3.2 Point of Entry and Default Customs Terminal

In absence of specific formal instructions to the contrary by the importer or consignee, duly communicated to DPWC for each specific event and/or Bill of Lading in the manner and formality established by Law and/or operational procedures, The Customer shall nominate the Terminal “Muelle Sur” as its default Point of Entry (or “Punto de Llegada”) and “Default Customs Terminal” (or “Deposito Temporal”) – as described by, and for the effects of, the General Customs Law of Peru (Legislative Decree 1035) and subsidiary rules and regulation.

Notwithstanding the above, the Customer shall have the option to nominate alternative temporary Customs terminals on behalf of the importer or consignee, in the event that:

- (a) The importer or consignee specifically requests an alternative Customs entry point; or
- (b) The Operator is unable to provide the services necessary to adequately handle a type of cargo for which specialized Customs or other regulatory authorisations or infrastructure is required (-Exempla Gratia: Explosives, Radio Active materials, Bio-Hazards, and other forbidden cargo; Military or Government-sensitive cargo, Currency or Bullion, etc.), or

The Operator, for the same aforementioned reasons, or for other valid operational considerations, may decline the nomination as default temporary customs terminal or point of entry..

4. VESSEL WARRANTY

The Customer warrants and undertakes to ensure that the Vessels are operated in compliance with all 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.

5. RIGHT TO INSPECT

5.1 Inspection of Operator Equipment

The Customer may, upon reasonable notice, inspect any equipment used to supply the Terminal Services. Such inspection must take place during regular working hours, at a time suitable to all relevant Parties. The Operator shall not unreasonably refuse any request for inspection.

5.2 Inspection of Customer Vessels

The Operator may, from time to time, conduct vessel compliance surveys and inspections as a part of the Operator’s Occupational Health and Safety responsibility. The Customer acknowledges that the Operator is required to provide its employee’s and subcontractors with a safe working environment and will comply with all reasonable requests to achieve this.

6. CONFIDENTIALITY & PUBLICITY RESTRICTIONS

The Parties undertake that all documents, records, correspondence and transactions whether in hand or electronic copy the operation and business of the other Party shall always be held and be deemed confidential and shall, save as contemplated by this Clause 6 not be disclosed to any third party, unless such matter is in the public domain (by reason other than disclosure by that Party) or if that Party shall be compelled by any judicial or administrative authority to disclose any such information.

The provisions of this Clause 6 shall remain in full force and effect even after services have been provided.

Neither Party shall knowingly use or permit the use of any information obtained during their relationship to the disadvantage of the other Party or for the profit of its own or any third party's interest.

Return of Confidential Information

Upon termination, each Party must, promptly following receipt of a written request from the other Party return to the latter party, and where not possible destroy, all confidential information of the latter party in material form (including without limitation, those parts of all notes and other records of the first party containing confidential information of the latter party in the first party's possession or control.

7. HEALTH, SAFETY AND ENVIRONMENT

7.1 Operator

The Operator is required to:

- (a) perform all work and provide all Terminal Services hereunder in a manner that ensures adequate protection for employees, and other stakeholders entering the premises of the Operator, such as but not limited to independent contractors, the public, the environment, the containers and the cargo, in compliance with all international and local health safety and environmental legislation. Where the Operator standard is higher than the local legislative requirement, then the Operator standard will prevail,
- (b) ensure its subcontractors' compliance with health, safety and environment requirements of this Agreement.
- (c) ensure its employees, servants, agents and subcontractors are provided with the necessary and adequate safety and environment training for performing the Terminal Services.
- (d) monitor and evaluate its safety performance, based on Operator lead and lag indicators and take such actions as are required or appropriate to rectify and improve its overall safety and environmental performance.
- (e) maintain an emergency response plan to deal with unforeseen events, such as but not limited to fire and explosion, and carry out drills periodically, including in such a manner and with such frequency as may be required to comply with local applicable laws and regulation. Where the Operator standard is higher than the local legislative requirement, then the Operator standard will prevail.
- (f) ensure that the Customer and its employees, servants, subcontractors, agents and other stakeholders receive and follow health and safety instructions when entering the Terminal.

7.2 Customer

The Customer is required to:

- (a) ensure that its employees, servants, subcontractors and agents comply with the reasonable health and safety regulations and instructions as set out by the Operator.
- (b) ensure that its Vessels comply with the applicable Laws and reasonable instructions as set out by the Operator. The Operator shall have the right to refuse berthing and/or labour assignment to the Customer in the event of, and to the extent of, the Customer's non-compliance with any of such Laws or instructions of the Operator. If a Vessel is at berth at the time of such non-compliance, the Customer undertakes to meet any additional costs resulting from such non-compliance and/or ensure that the berth is vacated immediately upon receipt of written request from the Operator.

7.3 Removal of Objectionable Cargo

The Operator reserves the right to move to another location and/or inspect any Cargo which in its reasonable judgement is likely to damage other cargo or property, at the risk and expense of the Customer (unless the condition of the cargo has been caused by the Operator's fault or negligence). The Customer will be notified prior to such removal if practicable.

8. SECURITY AT THE TERMINAL

8.1 Vessel at Customer's Risk

The Operator will not be responsible for the security or safety of any Vessel while tied up at the Terminal, unless due to the verifiable negligence or wilful misconduct on behalf of the Operator, and in such case, only to extend of such negligence or misconduct.

8.2 Compliance with Security Requirements

- (a) The Customer shall comply with all Laws pertaining to security requirements, the Facility Security Plan and standing instructions which may be operative at that time. The Operator shall have the right to refuse berthing and/or labour assignment to the Customer in the event of the Customer's non-compliance with any of such laws and regulations or requirements of the Operator. If a Vessel is at the Terminal at the time of such non-compliance, the Customer undertakes to meet any additional costs resulting directly from such non-compliance and/or ensure that the berth is vacated immediately upon receipt of written request from the Operator.
- (b) The Operator undertakes to implement and maintain each and every security measure necessary to ensure that the Terminal complies with international standards concerning security including as required by the ISPS code.

8.3 Costs of compliance with Security Requirements

In the event that a charge is implemented to recover additional costs of compliance with mandatory statutory requirements for security, the Operator may recover such charges from the Customer.

8.4 Stowaways

- (a) The Customer warrants that it will enforce strict access controls to be performed at the gangway on all Vessels whilst berthed at the Terminal, in order to prevent unauthorised access to those Vessels.

- (b) The Operator warrants that it will enforce strict controls to prevent unauthorised access to the Terminal.
- (c) 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 unauthorised personnel, unless due to the verifiable negligence or wilful misconduct on the part of the Operator.

9. CUSTOMER ACCESS TO TERMINAL

Subject to the Laws and the Facility Security Plan, the Operator shall allow reasonable access to the Customer and the Customer's Visitors, upon reasonable request, to attend at any Terminal for the purpose of carrying out the business and agency requirements of the Customer relating to the Terminal Services supplied by the Operator to the Customer. The Customer and the Customer's Visitors shall observe all requirements of the Facility Security Plan and all safety regulations and standing instructions which may be operative at that time. The Customer will be fully liable for the acts and omissions of the Customer's Visitors while they are present at the Terminal and shall indemnify and keep indemnified the Operator in respect of any loss or damage suffered or incurred as a consequence of any such act or omission.

10. OBLIGATIONS AND RELATIONSHIP ISSUES

10.1 Appoint Representative

The Customer and the Operator must:

- (a) each appoint and maintain, for the term of this Agreement, a suitable full time employee to represent it and to supervise the performance of its obligations (**Representative**);
- (b) each ensure its Representative regularly meets with the other's Representative to discuss the progress of this Agreement; and
- (c) if reasonably requested by the other, replace its Representative.

10.2 Laws to Override

Each Party acknowledges that the Laws may regulate how the Operator can perform the Terminal Services. The specifications of the Terminal Services, including without limitation the obligations, must allow the Operator to comply with, and are subject to such Laws.

10.3 Interdependence of Performance of Obligations

The Parties acknowledge that each Party's ability to meet its obligations is dependent upon the other Party meeting its obligations. Accordingly, neither Party shall be in breach of its obligations to the extent that its ability to meet those obligations has been adversely impacted by a failure of the other Party to meet its obligations.

10.4 Maintenance of Records

Each Party must maintain and retain relevant documents and records, for the term of this Agreement, sufficient to enable verification of compliance with its obligations under this Agreement and, where reasonably required by the other party or any governmental authority,

shall provide copies of such records (or reasonable access, as appropriate, during normal business hours) for the purposes of such verification.

11. SERVICE ISSUES

Each Party must notify the other Party, without undue delay, after becoming aware of anything that is likely to, or will, adversely impact on the other Party's ability to perform its obligations under this Agreement, specifying at least:

- (a) the nature and cause of the problem; and
- (b) as far as possible the steps being taken to minimise the impact of the problem.

The Parties must use their reasonable efforts to resolve the problem as quickly as possible.

12. SUBCONTRACTING

Subject to the Concession Contract, the Operator may sub-contract the performance of the Terminal Services or any part thereof, but, unless such a sub-contract is at the request of the Customer, any sub-contracting shall in no way relieve the Operator of any of its obligations under this Agreement and the Operator shall remain responsible for any sub-contractor and its performance. The Operator shall ensure that any such sub-contractors comply with and observe the terms and conditions of this Agreement as if they were an original party to this Agreement, in particular, but in no way limited to, the obligations of confidentiality provided in Clause 6.

If the Customer makes a request, the Operator may, subject to the Concession Contract, sub-contract the provision of Terminal Services with respect to the Vessel to another terminal operator in the Port upon such terms and conditions as the Operator may negotiate with that operator, provided that the Operator will not be liable to the Customer for any adverse performance or acts or omissions of that operator. Notwithstanding the foregoing, the provisions of this Agreement shall continue to apply as between the Operator and the Customer, including, without limitation, the payment of rates by the Customer in accordance with the Rates prescribed by The Operator's General Public Tariff.

In the event of a Vessel call being subcontracted or transferred to another terminal operator at the request of the Customer, any Containers received into the Operator's Terminal will be relocated to the other operator's terminal at the expense of the Customer and each Container will be charged for the gate-in, gate-out and any storage accruing in accordance with the Rates contained in The Operator's General Public Tariff.

13. FORCE MAJEURE

13.1 Obligations Suspended

If a Party is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event affecting that Party, then that Party's obligation to perform in accordance with this Agreement will be suspended for the duration of the delay arising out of the Force Majeure Event.

Notwithstanding the above, the Parties shall:

- (a) make all reasonable efforts to prevent or minimise and thereafter mitigate any delays or costs occasioned by any Event of Force Majeure, including recourse to alternative acceptable sources of services, equipment and materials; and
- (b) use their best efforts to ensure the earliest possible resumption of normal performance of this Agreement and any related agreements after the occurrence of any Event of Force Majeure and perform their obligations hereunder and thereunder to the maximum extent practicable.

13.2 Notification

Within a reasonable period following the occurrence of a Force Majeure Event, the Party affected by it must notify the other Parties of the Force Majeure Event and the extent to which the notifying Party is unable to perform its obligations under this Agreement.

14. PAYMENT OBLIGATIONS

14.1 Payment of Rates

The Operator's General Public Tariff states the Rates the Customer must pay to the Operator under this Agreement for Services rendered. The Operator will, upon the request of the Customer and, where possible prior to carrying it out, price any individual Service that does not have a corresponding Rate under The Operator's General Public Tariff.

14.2 Taxes

The Rates stated in this Agreement are exclusive of all applicable taxes (including, but not limited to, Peruvian Value Added Tax (*Impuesto General a las Ventas*)). Where such tax is payable in respect of the provision of the Terminal Services under this Agreement, then the Operator is entitled to recover that amount from the Customer. In that event the Operator must provide the Customer with a compliant tax invoice with respect to the amount of tax charged.

14.3 Basis of Invoicing

Promptly after each Vessel call or as required under applicable Laws, the Operator will invoice the Customer for all amounts owing under this Agreement for Terminal Services supplied in respect of that Vessel call, specifying how those amounts have been calculated as well as providing supporting documentation. Storage and other ancillary charges will be invoiced on a periodic basis or as required under applicable Laws.

Any disbursements incurred by the Operator on behalf of the Customer and not related to a particular port call of a Vessel shall, unless otherwise agreed, be computed and settled in the same currency as those in which the expenses included on the invoice were incurred or at the rate of exchange published by the Operator.

14.4 Applicability of Rates

Unless otherwise agreed in writing, in a valid, duly signed, and executed, Terminal Services Agreement between The Operator and The Customer, or alternatively, on a specific ad-hoc quotation or offer for services issued by The Operator to The Customer, for a specific purpose; all Rates and Charges shall be assessed as per the Operator's General Public Tariff. Where services are not covered by the Operator's General Public Tariff, then a specific ad-hoc quotation issued by The Operator to The Customer is required..

14.5 Credit Period

Unless a valid Credit Agreement exists duly signed and executed between The Operator and The Customer, The Operator may request from The Customer, advanced payment, cash deposit, bank guarantees, or other type of security prior acceptance and/or commencement of the provision of services

The Customer must pay each undisputed Operator invoice (including excess storage charges and other Operators charges) without set off or counterclaim within the Credit Period.

14.6 Disputed Invoices

If the Customer disputes any amount stated in an invoice provided in accordance with clause 14.3, the Customer must notify the Operator within the Credit Period and the relevant Parties must seek to resolve the dispute as quickly as possible. The Customer must pay the non disputed amount of the invoice within the Credit Period. In the event that the relevant Parties cannot resolve the dispute informally, then they must follow the applicable dispute resolution procedure in clause 15 to resolve the dispute.

14.7 Interest on Overdue Amounts

The Operator may charge the Customer interest on any undisputed, overdue amount, calculated daily at the maximum lending rate as charged on the due date by the Central Bank of Peru, from the due date until the date of payment..

14.8 Remedies for Non-Payment

If the Customer fails to pay undisputed invoices for thirty (30) days after the due date, the Operator shall be entitled to seek remedy as it sees fit as it best sees fit and legally viable.

15. DISPUTE RESOLUTION

15.1 Duty to Notify

A Party claiming that a dispute has arisen must notify the other Party in writing.

15.2 Nomination of Authorised Personnel

Within 7 days after a notice is given under clause 15.1, each Party must nominate in writing to the other Parties a senior employee (other than its Representative) authorised to settle the dispute on its behalf.

15.3 Resolution of Dispute

During the 21 days after the respective nominations in Clause 15.2 (or if the Parties agree a longer period, that longer period) each Party's nominee must use his or her best efforts to resolve the dispute.

15.4 Reference to Mediation

If the dispute is not resolved within the period given by clause 15.3, then the Parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (“CEDR”) Model Mediation Procedure. To initiate mediation a Party shall give notice in writing (a “**Mediation Notice**”) to the other Party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator if the Parties shall not be able to agree such appointment by negotiation. The mediation shall commence within twenty-eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour. Thereafter, paragraph 14 of the Model Procedure will apply. No Party will commence legal proceedings or any other form of dispute resolution against the other until thirty (30) days after such mediation of the dispute has failed to resolve the dispute.

15.5 Reference to Arbitration

If the dispute is not resolved within that time, the dispute must be referred to arbitration in London in accordance with the Arbitration Act 1996 save to the extent necessary to give effect to the provisions of this Clause 15.5, such that:

- (a) The arbitral hearing shall be conducted in accordance with the London Maritime Arbitrators' Association (LMAA) terms current at the time when the arbitration hearings are commenced and shall be conducted in the English language;
- (b) The reference shall be to three arbitrators. A Party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other Party requiring the other Party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other Party appoints its own arbitrator and gives notice that it has done so within the 14 days specified.
- (c) If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the Party referring a dispute to arbitration may, without the requirement of any further prior notice to the other Party, appoint its arbitrator as sole arbitrator and shall advise the other Party accordingly. The award of a sole arbitrator shall be binding on both Parties as if he has been appointed by agreement.
- (d) Nothing in this clause 15.5 shall prevent the Parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.
- (e) In cases where neither the claim nor the counterclaim exceeds the sum of US Dollars fifty thousand (\$50,000) or such other sum as the Parties may agree, the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.
- (f) Judgement upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- (g) The Parties shall use every reasonable endeavour to resolve disputes between them in the shortest possible time consistent with the proper presentation to the expert or arbitration tribunal of their submissions and evidence. The Parties will in particular seek, in the absence of any reasonable excuse, to make such submissions and present such evidence within a period of thirty (30) days from the commencement of the proceedings. In the event of unreasonable delay by either Party, the expert or the arbitration tribunal shall be entitled to make an award even if that Party has failed to make or complete its submissions.
- (h) The decision of the arbitrator, made for any purpose pursuant to the Agreement, shall be final and binding upon the Parties and will be carried into immediate effect by them. If the party against whom an arbitral award has been made refuses to comply with the award, the other Party may approach any court of competent jurisdiction for the purpose of enforcement of the award;
- (i) The costs of arbitration shall be borne equally by the Parties or in accordance with the directions (if any) of the arbitrator; and

- (j) The Parties agree that, in the event their respective designated representatives shall not be able to resolve matters, they shall have recourse only to arbitration as a means of dispute resolution to the exclusion of instigating any form of legal proceedings in the local or foreign courts, except for the permitted purpose of enforcement under clause 15.5.

15.6 Application of Peruvian Procedures

Notwithstanding the arbitration procedure described in the clauses above, the Customer shall have the option to exercise its rights through the claims resolution mechanism and jurisdiction of OSITRAN in those matters of exclusive jurisdiction of OSITRAN, or as per the Concession Contract or other Applicable Law or statute within the Republic of Peru.

16. TERMINATION

16.1 Duty to Notify

A Party (*affected party*) must notify the other Parties immediately if:

- (a) the affected party disposes of the whole or any part of its assets, operations or business other than in the normal course of business (except a voluntary liquidation for the purpose of amalgamation or reconstruction if the new company assumes all of the affected party's obligations under this Agreement on terms satisfactory to the Operator);
- (b) a mortgagee, receiver, receiver and manager, liquidator, provisional liquidator or any kind of external administrator is appointed to the affected party or any of its assets or business;
- (c) any arrangement or compromise is entered into between the affected party and its creditors;
- (d) the affected party ceases to be able to pay its debts as and when they fall due; or
- (e) the affected party ceases to carry on its business in the ordinary course.

16.2 All Rights Preserved

Termination of this Agreement under this clause 16 shall be without prejudice to the accrued rights and obligations of the Parties under this Agreement, including, without limitation, the right of the Operator to be paid all accrued fees and charges then outstanding under this Agreement and the obligations of confidentiality imposed on all Parties.

17. AFTER TERMINATION

17.1 Cargo Returned Against Payment

- (a) except in case of termination of the Concession Contract, the Operator must return to the Customer, at the Customer's expense and upon fulfilment of the Customer's payment obligations under sub-clause 17.1(b), any Containers or Cargo in the Operator's or its subcontractors' possession or control; and
- (b) the Customer must pay the Operator for all Terminal Services supplied up to and on termination.

17.2 Clauses Survive

Clauses 6, 15, 18, 19, 20, 21 and 22 continue to bind the Parties after termination of this Agreement.

18. LIABILITY OF OPERATOR

18.1 Liability

The Operator shall indemnify and keep indemnified the Customer (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Operator or any act or omission of the Operator (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such loss or damage is caused by a breach of this Agreement or an act or omission constituting negligence or wilful misconduct by the Customer (or any of its employees, officers or agents).

18.2 Liability Cap

Subject to the provisions of clause 20.4, the liability of the Operator under this Agreement arising out of any single incident or series of incidents arising from a common cause shall not exceed USD One million (\$1,000,000) (**Liability Ceiling Amount**).

The liability of the Operator shall not exceed the financial limits set out below for the specified category of loss or damage provided that the maximum liability of the Operator arising out of any single incident or series of related incidents or series of incidents arising from a common cause shall not in any case exceed the Liability Ceiling Amount.

- (a) In the case of damage to a Vessel a maximum of \$5,000,000 arising out of any single incident or series of related incidents.
- (b) In the case of physical loss or damage to a Container, or a Container and its ancillary equipment the depreciated value or the reasonable cost of repairs whichever is less.
- (c) In the case of physical loss or damage to Cargo – the Customer's liability to its customer under its Bill of Lading or other contract of carriage to a maximum of:
 - (i) in the case of containerised Cargo: \$25,000 per Container
 - (ii) in the case of break bulk or non-containerised Cargo: \$35,000 per piece arising out of any single incident.
- (d) In the case of any other equipment owned or operated by the Customer not previously referred to in this clause the reasonable cost of repair or the depreciated value thereof whichever is less subject to a limit of \$15,000.

18.3 Liability Floor

The Customer shall make no claim against the Operator for an amount less than USD five hundred (\$500) (**Liability Floor Amount**).

18.4 No Liability

Notwithstanding the generality of clause 18.1, the Operator shall not be liable for any loss or damage to a Container or Cargo, death or personal injury to the extent that such loss, damage, death or injury is caused by or contributed to by defective protection or packing, latent or natural wastage or contamination of Cargo, mis-declared Cargo information, failure or malfunction of refrigerated container equipment or refrigerants or defective or malfunctioning twistlocks, or any other equipment of the Customer.

19. LIABILITY OF CUSTOMER

19.1 Liability

The Customer shall indemnify and keep indemnified the Operator (and its employees, officers and agents) in respect of any death, personal injury, loss or damage suffered or incurred as a consequence of any breach of the Agreement by the Customer or any act or omission of the Customer (or any of its employees, officers or agents) constituting negligence or wilful misconduct except to the extent that such loss or damage is caused by a breach of this Agreement or an act or omission constituting negligence or wilful misconduct by the Operator (or any of its employees, officers or agents).

19.2 Himalaya Clause

The Customer:

- (a) must include in all its contracts of carriage for Containers or Cargo loaded or discharged at the Terminal, provisions whereby every sub-contractor of the Customer (including the Operator and each of the Operator's sub-contractors):
 - (i) shall have the benefit of any provision in such contract which limits the Customer's liability relating to such carriage (including, without limitation, any liability caps or limitation periods), and the Operator hereby appoints the Customer as its agent only for such limited purpose; and
 - (ii) shall not be liable to any party other than the Customer in relation to Cargo and, without prejudice to the liability of the Operator to the Customer and the Customer's rights of indemnity under this Agreement, the Customer hereby indemnifies the Operator and each of the Operator's sub-contractors and shall hold them harmless against any claim by a third party relating to Cargo.
- (b) acknowledges that one of the Operator's promises to its sub-contractors is that they will enjoy the benefit of the exclusion and limitation of liability terms agreed with the Customer and accordingly agrees that:
 - (i) the exclusions and limitations of the Operator's liability in clauses 18 and 20 of this Agreement benefit the Operator's sub-contractors, all employees and agents of the Operator or of any sub-contractor and anyone else who is vicariously liable for acts or omissions of any such person; and
 - (ii) for the purposes of this sub-clause (b) only, the Operator enters into this Agreement as agent for all such persons who shall be treated as if they were parties to this Agreement.

19.3 Liability Cap

Subject to the provisions of clause 20.4, the liability of the Customer under this Agreement arising out of any single incident or series of incidents arising from a common cause shall not exceed the Liability Ceiling Amount specified in Clause 18.2 above.

19.4 Liability Floor

The Operator shall make no claim against the Customer for an amount less than the Liability Floor Amount specified in Clause 18.3 above.

20. GENERAL LIABILITY PROVISIONS

20.1 No Other Liability

In addition to any applicable legislation and subject to clause 20.4 and the Concession Contract, this Agreement states:

- (a) the entire liability of the Parties to each other; and
- (b) the extent of each Party's liability for any claim.

For the avoidance of doubt, the limitations of liability stated in this Agreement shall not prejudice the rights of any Party to pursue any remedy available at law including, without limitation, application for an order for specific performance or injunctive relief to enforce the terms of this Agreement.

The Customer hereby waives any liability of the Republic of Peru, OSITRAN or its respective officials and hereby waives bringing any civil liability action against any such party arising from this Agreement.

20.2 Mitigation

Notwithstanding any other provision herein, both the Operator and the Customer shall, at all times, take all reasonable steps to minimise and mitigate any loss, damage and/or costs and expenses for which the relevant Party is entitled to bring a claim against the other pursuant to this Agreement.

20.3 Claim notification periods

Except for the matters set forth in clause 15.6, in which cases applicable Peruvian law will apply, no claim may be pursued by either the Operator or the Customer (**claimant** for the purpose of this clause) against the other (**recipient** for purposes of this clause) unless:

- (a) in the case of an event which customarily requires a survey of damage, the claimant must immediately notify the recipient and afford the recipient an opportunity to survey the damage;
- (b) the recipient has been advised in writing of the event or events giving rise to the claim within one hundred and eighty (180) days of the claimant learning of their occurrence; and
- (c) formal notification of such claim, in the form of written demand or commencement of proceedings, setting out all relevant details of the claim is received by the recipient within fifteen (15) months of the occurrence of such event or events.

20.4 Non-Excludable Condition

The Parties do not exclude or limit the application of any provision of any statute (such as an implied condition or warranty) or the Concession Contract to the extent that such exclusion would contravene that statute or the Concession Contract, as applicable, or cause any part of this Agreement to be void.

20.5 Exclusions from Liability

Subject to clause 20.4, the Operator and Customer exclude all liability to each other for any loss or damage which is either:

- (a) caused by and to the extent of a Force Majeure Event; or
- (b) consequential or indirect loss or damage whether arising in contract, tort, statute or otherwise, including, without limitation, loss of revenue, income, profits, market, interest or hire, fiscal loss or loss on currency

20.6 Material Breach

The provisions of this clause 20 apply even in circumstances arising from a material breach of contract or breach of a material term.

21. INSURANCE OBLIGATIONS

21.1 Operator

The Operator must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent terminal operator and in any event to a level of cover not less than the maximum limit of liability prescribed by clause 18.1 and 18.2, including, but not limited to, liability insurances in respect of the Operator's negligence;
- (b) provide evidence of the currency of such insurance coverage upon the Customer's request.

21.2 Customer

The Customer must at all times during the term of this Agreement:

- (a) take out and maintain with insurers of international standing all such insurances and insure against such risks and for such sums as would normally be taken out by a prudent shipping operator and in any event to a level of cover not less than the maximum limit of liability prescribed by clause 19.3, including, but not limited to, P&I Club insurances; and
- (b) provide evidence of the currency of such insurance coverage upon the Operator's request.

22. RELATIONSHIP BETWEEN THE PARTIES

This Agreement does not create a relationship of employer and employee, principal and agent (except for the limited purpose stated in clause 19.2) or partnership between the Operator and the Customer.

Other than as provided in this Agreement, a Party shall not incur any liabilities nor make any contractual commitment on behalf of the other Party without prior written approval.

23. AGENT

The Customer may, subject to prior notification in writing to the Operator, appoint an agent in respect of the Terminal Services and other services and facilities provided by the Operator pursuant to this Agreement, 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 Agreement unless the Customer notifies the Operator to the contrary at the time of such appointment or any time thereafter and:

- (a) 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 under this Agreement (including any rebate);

- (b) Any payment made by the Operator to the Agent pursuant to this Agreement 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;
- (c) Any payment made by the Operator to the Agent pursuant to this Agreement 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;
- (d) The power granted to the Operator under sub-clause (a) 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.

24. NOTICES

24.1 Notification

A Party notifying or giving notice under this Agreement must notify:

- (a) in writing;
- (b) addressed to the address of the recipient, as follows:
 - **Customer's Address:** Such address as declared in writing by The Customer for this purpose; and/or, such address from which the Customer's business is known to be usually conducted (whether global, regional, or local headquarters); and/or such return address from where previous Customer's correspondence has originated; and/or, the address of their known local agents; and
 - **Operator's Address:**
DP WORLD CALLAO SRL
TERMINAL DE CONTENEDORES "MUELLE SUR"
Avenida Manco Capac 113, Callao 1 - PERU
- (c) left at or sent by post, e-mail or facsimile to that address.

24.2 Receipt

A notice given in accordance with clause 24.1 will be taken to have been received:

- (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
- (b) if sent by post, 5 days after posting; and
- (c) if sent by facsimile or e-mail, on the first working day at the recipient's address, after transmission.

25. GENERAL

25.1 Waiver and Modification

No waiver of any breach of these provisions will be effective unless such waiver is in writing and signed by each Party to this Agreement against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any provision of this Agreement will be effective or enforceable unless made in writing in an agreed format and signed by all Parties to this Agreement.

25.2 Representations, Warranties and Undertakings

Both Parties shall, throughout the Term of this Agreement, be duly incorporated, validly existing and in good standing under the laws of the place of their incorporation, have full power to carry on their businesses and to enter into and perform their obligations under this Agreement, and shall, throughout the Term, comply with all statutory and other requirements relative to their businesses,

Both Parties have taken all necessary corporate and other steps and have obtained all necessary consents and approvals (if any) to authorise the execution, delivery and performance of this Agreement;

25.3 Counterparts

This Agreement may be signed in any number of counterparts with the same effect as if the separate signatures or executions were on the same agreement.

25.4 Further Assurance

Each Party agrees, at its own cost and expense, upon the request of the other Parties, to do and execute or cause to be made done or executed all such acts, instruments, assurances and writings as may be reasonably necessary or desirable to perfect or give effect to the provisions of this Agreement and to use all reasonable endeavours to cause third parties to do likewise.

25.5 Severability

If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable, the legality or validity of the remainder of this Agreement shall not be affected and the remainder of this Agreement shall continue in full force and effect.

25.6 Strict Compliance

In the absence of express provision to the contrary, failure or omission by a Party to this Agreement at any time to enforce or require strict or timely compliance with any provision of this Agreement or any related document shall not impair the ability of that Party to exercise the rights and remedies it otherwise has in respect of a breach of any such provision.

25.7 No Merger

None of the provisions of this Agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing. All provisions of this Agreement will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of this Agreement.

25.8 Assignment of Rights

No Party may assign its rights under this Agreement without the prior consent in writing given by the other Parties (which may be granted or withheld entirely at the discretion of such other Parties), except that in the case of corporate reorganizations or restructurings where the other Parties are not materially prejudiced thereby, such consent may not be unreasonably withheld.

25.9 Entire Agreement

What is expressed in this Agreement is the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the Parties, including without limitation, any letter of intent or proposal.

25.10 Precedence

In the event that a conflict arises between the Parts of this Agreement, the General Terms and Conditions will take precedence.

25.11 Costs

Each Party must bear its own costs and out of pocket expenses (including legal costs) incurred in relation to the negotiation and execution of this Agreement.

25.12 Waiver of Sovereign Immunity

If any Party is owned, directly or indirectly, in whole or in part by any country, state or sovereign or is an authority, agency or instrumentality of any country, state or sovereign, such Party hereby waives any and all rights, immunities and defences to which it may be entitled in that capacity under any sovereign immunity legislation or similar law including, without limitation, any immunity from pre-judgment seizure, arrest or attachment.

[END OF SECTION]

SECTION 3: OPERATOR'S OBLIGATIONS

26. GENERAL OBLIGATIONS

The Operator shall provide the Terminal Services described in this Agreement to the Customer:

- (a) In compliance with the Agreement and applicable Laws;
- (b) In a safe and efficient manner;
- (c) In accordance with any lawful and reasonable directions given from time to time by the Customer within the scope of this Agreement;
- (d) With rates and charges assessed as per the appropriate provisions of the Operator's General Public Tariff, ad-hoc quotation, or individual Terminal Services Agreement (contract), as applicable.

27. BERTHING

The Operator shall:

27.1 If a Vessel Arrives on Schedule

(meaning arrival at the Terminal within 2 hours of the commencement of the assigned Berthing Window)

- (a) provide a berth within 8 hours (one shift) of the assigned window.
- (b) work the Vessel to maintain the agreed Berthing Window Plan, provided the Vessel meets the MCD requirement and has an exchange that does not exceed the agreed move count.

27.2 If a Vessel does not Arrive on Schedule:

- (a) berth and work the Vessel at the next available opportunity. Work will commence on the Vessel at the normal start of shift after Arrival.
- (b) provide the best resources and productivity possible using Good Industry Practice, however the Operator shall be under no obligation to meet the agreed Berthing Window parameters.

SHIP OPERATIONS

28. PLANNING

The Operator shall provide Stowage Planning based upon instructions from the Customer including but not limited to:

- (a) accessing the incoming electronic bay plan and retransmitting the completed electronic bay plan as soon as available upon operations being completed; and
- (b) providing the Vessel with the final bay plan data by hard copy and electronic media storage, in accordance with the existing standard, not less than six (6) hours prior to scheduled departure subject always to all export Containers being received as per agreed cut-off times.

29. LOADING AND DISCHARGING

The Operator Shall provide,

- (a) cranes, labour and handling equipment necessary for standard loading and discharging operations, so as to ensure that the Containers and Cargo of the Customer are handled in a safe and efficient manner in accordance with Good Industry Practice, assessed as per the Operator's General Public Tariff, and, whenever special equipment is required, this may be provided subject acceptance by the Operator and ad-hoc quote, and operational coordination;
- (b) a bay plan and a working sequence for acceptance by the Vessel's command prior to the commencement of operations provided that the Customer complies with requirements of Appendix 2 (including Clauses 0 and 0);
- (c) movement of Containers from Vessel's cells or deck to wharf or vice versa;
- (d) restowing of containers at the request of the Customer;
- (e) lashing and unlashng of deck Containers and Cargo, where patent lashing fittings only are used;
- (f) plugging and unplugging of reefer containers onboard the vessel;
- (g) opening and closing of twistlocks and attaching and removing twistlocks from Containers on and under deck;
- (h) discharging and loading of Vessel twistlock bins or racks
- (i) discharging, loading and securing of hatch covers;
- (j) movement of Containers from wharf to stacking area or vice versa;
- (k) checking and confirming Container numbers and Seal numbers as per following provisions:
 - The operator will check and confirm the Customers' seal numbers upon discharge, and at gate out or gate in, as applicable
 - When for reasons of safety or efficiency seal number verification is not possible under the cranes, the Operator shall communicate this situation to the Customer and only perform verification of seal numbers at gate-in or out, respectively as applicable.
- (l) reporting (in compliance with EDIFACT standards and communicated electronically) of Containers and Cargo loaded and discharged from the Vessel in the format required by the Customer provided that the Customer complies with the provisions of clause 0 of Appendix 2; and
- (m) documenting and reporting of visual damage to Containers and other equipment, including reporting leakage or any other apparent or suspected damage to contents, whether from containers discharged, on yard, on board, or in transit, immediately upon detecting this situation, and whether the event was detected or suspected from a routine inspection or fortuitous situation.

30. DOCUMENTATION

Upon arrival at the Terminal, the Operator shall provide the Vessels with the following documentation:

- (a) Full stowage plan (soft copy, in terminal generated BAPLIE file format); including slot positions for Reefer, DC/IMO, and OOG cargo;

- (b) Work sequence;
- (c) Any specific documentation required on a case by case basis; and
- (d) Estimated departure time.

Throughout the cargo operation, the Operator shall supply updated documentation to the Vessel as and when this becomes available.

Upon completion of cargo operations the Operator shall supply the Vessel with any of the above documentation that may have changed or otherwise been incomplete.

The Operator and the Customer shall agree a format for the Terminal Departure Report and the timing for submission of such report.

31. MOVES

For the purpose of calculating vessel productivity, the following move standards shall apply:

Discharge or load	per container	=	1 move
Restow same bay	per container	=	1 move
Discharge, land and restow	per container	=	2 moves
Non-Standard Containers	per container	=	3 moves
Each hatch lid	per complete cycle	=	6 moves

32. MINIMUM CRANE DENSITY (MCD)

Minimum Crane Density (**MCD**) is defined as the average number of cranes the Vessel can sustain for the duration of the Berthing Window. This is given by the total exchange divided by the number of moves to be made by the crane with the most moves.

<u>Example</u>	<u>Vessel 1</u>	<u>Vessel 2</u>
Total Exchange (moves)	1,200	1,200
Crane 1 (moves)	300	400
Crane 2 (moves)	300	400
Crane 3 (moves)	600	400
MCD	= (1,200 ÷ 600) = 2.0	= (1,200 ÷ 400) = 3.0

33. PERMISSIBLE DELAYS

The following exclusions constitute permissible delays:

- (a) Delays caused by the Vessel or its equipment which prevent or delay Container exchange work being carried out;
- (b) Cessation of exchange work due to Vessel movements on or adjacent to the Terminal;
- (c) Handling of break bulk or over dimensional Cargo;
- (d) A Force Majeure Event;
- (e) Delays to Vessel operations as a result of industrial action and/or authorised Award stoppages (including Closed Port Days, whether worked or not). The Customer acknowledges that after industrial action or authorised award stoppages the Operator requires a recovery period for berthing of Vessels at the Terminal to return to normal of at least two (2) times the duration of the industrial action or stoppage;
- (f) Delays to Vessel operations caused by late receipt of Containers or by revisions to load lists or late submission of load/discharge instructions;

- (g) Failure and/or interruption to power supply not within the control of the Operator;
- (h) Delays where Containers are worked into or out of non-cellular holds, where two 20ft Containers are stowed in a 40ft cellular hold, or where the stowage plan requires a crane to boom up/down to service cargo either side of a Vessel's bridge;
- (i) Delays during pilotage and other delays not caused by the Operator before labour aboard and after labour ashore;
- (j) The delay in arrival of the Vessel for the agreed window;
- (k) Delays caused by the discharge of funnel fumes or by insufficient, inaccessible or poorly maintained lashings and fittings including incorrectly fitted lashings or faulty twistlocks;
- (l) Delays caused by any statutory authority;
- (m) Bona fide delays to previous ships scheduled to complete before the Closed Berthing Window outside the control of the Operator; and
- (n) Weather delays;
- (o) Any and such other delay attributable to Force Majeure, Act of God or Nature, Act or Restraint of Princes, etc.

YARD OPERATIONS

34. RECEIVAL AND DELIVERY:

The Operator shall provide:

- (a) suitable handling and storage areas, together with gate operations for the receipt and delivery of Containers by road, within the limits of established by the Concession Contract;
- (b) details of the normal receipt and delivery times as indicated by the Operator and as may be amended by the Operator from time to time
- (c) delivery of import Containers/Cargo at the Terminal (during normal receipt and delivery hours) and all clerical work and reporting associated, including EIR and visual inspection of equipment;
- (d) receipt of export Containers/Cargo within the receipt period in accordance with the procedures noted below:
 - (i) The **Cut-off** for all Vessels as per the berth plan published on the Operator's website, in general, 24 hour(s) preceding the advised time of Arrival or earlier if required by the Vessel Operator;
 - (ii) Cut-off for transshipment containers shall be 24 hour(s) preceding the advised time of Arrival or as otherwise indicated by The Operator, in writing.
 - (iii) Normal Receipt & Delivery Days are Monday to Sunday inclusive.
 - (iv) Commencement of the Receipt Period will be declared by the Operator based on the estimated time of Arrival.
 - (v) The **Receipt Period** for each Vessel will be corresponding to the interval of 3 consecutive Receipt & Delivery days before and inclusive of the Cut-off day, or the day on which the estimated time of Arrival is notified to the Operator, whichever is the latest.

- (vi) Once a Cut-off is declared it will not be altered unless the delay in Arrival is more than 12 hours and such delay is notified more than 2 days before the previously notified estimated time of Arrival. In this event, the Cut-off will be adjusted according to the notified period of delay in Arrival.
- (vii) Only in very special circumstances will arrangements be considered for late receivals, and these must be agreed before the agreed Cut-off.
- (viii) Requests for late receivals made before Cut-off will be subject to agreement between the Parties as to the costs involved. No guarantee will be given that such late receivals will be accepted.
- (ix) In the event of a Late Receival being requested, the following will apply:
 - 1. All late receival applications must be lodged through the Vessel Operator prior to the normal cargo cut-off for that Vessel.
 - 2. The Vessel Operator's Late Receival Request (LRR) is to be completed and sent to the Receival & Delivery Coordinator at the Terminal.
 - 3. All LRR's must be accompanied by a lodged ERA.
 - 4. Except in the case of restricted hazardous commodities, LRR's cannot be considered for containers arriving after the vessel has commenced to work.
 - 5. The Operator will promptly respond to the request by sending the LRR back, advising if the request has been accepted.
 - 6. Once the Late Receival arrangements are confirmed the Operator will arrange Terminal time slots for the appointed carrier.
- (x) For consortiums where more than one operator is involved, the Operator will only agree receival arrangements, regardless of whether they are normal, late or special receivals, with the Vessel Operator.
- (e) regular reports (in compliance with EDIFACT-BAPLIE standards and conventions, communicated electronically) of Containers and Cargo movements into and within the Terminal in the format required by the Customer, provided that the Customer complies with the provisions of clause 0 of Appendix 2. The Operator shall report a minimum of 95% of events within 3 hours of the actual live event.
- (f) arrangements at the discretion of the Operator for acceptance/delivery of Containers/Cargo outside normal receival and delivery hours.

35. TRUCK TURN TIMES

The Operator shall deliver Truck turn times as per the provisions of the Concession Contract.

36. RAIL OPERATIONS

Not Applicable.

37. STORAGE

The Operator shall provide:

- (a) storage for export Containers/Cargo received during the Receival Period noted in 1.1(a)(i)(A)1.1(d).
- (b) storage for import Containers/Cargo following the completion of Vessel operations in accordance with the provisions contained in Appendix 4;
- (c) storage for transshipment Containers/Cargo following the completion of Vessel operations in accordance with the provisions contained in Appendix 4;

38. TEMPERATURE CONTROLLED AND VENTILATED CARGO AND CONTAINERS

The Operator shall:

- (a) provide electrical outlets and connect and disconnect the power supply;
- (b) set temperatures in accordance with the set points notified on the Reefer List as provided by The Customer, and monitoring the temperature settings displayed on the reefer units twice daily whilst in the Terminal and after receipt or prior to delivery;
- (c) report faults, variations between the Reefer List set point and Container set point, and machinery malfunctions (including abnormal temperature variations as nominated and provided by the Customer) to the Customer promptly upon discovery;
- (d) where applicable, establish and monitor fresh air exchange and humidity settings as stated on the Reefer List.

(e) **Operator Excused from Liability**

The Operator will not be liable in respect of:

- (i) any failure of or interruption in the supply of electrical power, beyond the control of the Operator, to the Containers referred to in this clause;
- (ii) any failure or malfunction of such Containers or any associated equipment;
- (iii) any claim in respect of a Container or Cargo where the Operator has properly performed all its obligations under this Agreement; or
- (iv) any claim in respect of a container or cargo where the operator has not been advised of the temperature settings required.

39. HAZARDOUS CARGO

The Operator shall not be obliged to handle Cargo that is prohibited by any of the Laws;

- (a) Subject to this clause, with respect to Hazardous Cargo or any Cargo listed as restricted by the Customer, the Operator and the Customer must agree in writing upon arrangements for handling such restricted Cargo prior to the arrival of the Cargo, in line with the Customer's documentation for "Quality/Hazardous Materials, Procedures & Requirements", detailed in Clause 4.8 below.
- (b) Subject to this clause, with respect to all Hazardous Cargo, the Operator may impose charges to recover extra costs incurred, including costs for labour delay time, and special insurance or handling procedures required by laws, Good Industry Practice, or in compliance with the Customer's procedures referred to below.
- (c) The Operator may refuse to handle Hazardous or restricted cargo:
 - Whenever said cargo is not authorised, by Laws, Regulations, or Government authority, to be handled or stored at the Port,
 - Whenever the nature of said cargo, or its packaging, or its containers, or a combination thereof, requires special equipment, or storage areas, or protective measures, or permits, insurances and other procedural requirements, which the operator does not own, hold, or is capable of arranging within reasonable time and cost.
 - Whenever the conditions upon which said cargo arrives –whether inherently, or due to damage, pilferage, or alike circumstances occurring during voyage, pose a threat to the health and safety of the Operator's staff, or to its infrastructure and-or property, or to the staff and-or property of third parties.

- (d) Notwithstanding point (c) above, acceptance by the Operator to handle or store Hazardous or Restricted cargo shall not constitute acceptance of liability by the Operator, in respect to any damage or claim arising from such operation, and such acceptance to handle or store Hazardous or Restricted cargo, does not relieve the Customer from any liability or obligations over said cargo.

40. CUSTOMER “QUALITY/HAZARDOUS MATERIALS, PROCEDURES & REQUIREMENTS”

Notwithstanding the obligations specified in Clauses 5 and 7 of this Agreement:

- (a) The Customer shall, *at its time and expense*, have the right to periodically evaluate the safety practices of the Operator (including its subcontractors and agents) with respect to records, equipment condition, operations, employee training and performance. Any inspection, audit or compliance review will be conducted at a mutually agreed time and the Customer shall provide the Operator with a written copy of the evaluation.
- (b) While Hazardous Materials / Dangerous Goods are in the Operator’s care, custody and/or control, the Operator shall abide and comply with all regulations applicable to it relative to the receipt, handling, storage and transportation of Hazardous Materials / Dangerous Goods, including but not limited to:
1. Documentation, Placarding / Marking and Equipment:
 - a) Valid Hazardous Materials / Dangerous Goods shipping papers (Dangerous Goods Declaration and Container Packing Certificates) are received and the information contained therein is maintained with the shipment while in the Operator’s custody.
 - b) Upon receipt from cargo, provide copies of shipping papers (Dangerous Goods Declaration and Container Packing Certificate) to the Customer, both for Customer’s own cargo and for third party cargo loading on Customer’s vessels.
 - c) Ensure placards, markings and (for LCL) labels are in place and agree with the shipping papers.
 - d) Missing placards, labels and / or marks must be reported to the Customer to ensure replacement.
 - e) Empty containers presented at the Operator’s gate must be free of any residues and/or any hazardous materials / dangerous goods placards and markings prior to receipt. Containers not complying with this requirement shall be rejected at the gate. (Note: Empty tanks with hazardous materials / dangerous goods residues must be treated as if full).
 - f) Containers and equipment shall be inspected for visible defects, damages, spills / leaks with appropriate actions taken if defects are noted.
 - g) The Operator shall segregate hazardous materials / dangerous goods containers for inspection upon receipt, or make them available for inspection if inaccessible within 24 hours of Customer’s request. The Customer must notify the Operator in due time before loading if a hazardous container requires inspection.
 2. Emergency Response
 - a) Notification to applicable authorities as required

- b) Immediate notification to the actual shipper / contact party via the 24 hour emergency telephone number indicated on the Hazardous Materials / Dangerous shipping papers if indicated.
 - c) Immediate availability of Hazardous Materials / Dangerous Goods shipping paper information for use by emergency responders and / or authorities.
 - d) Immediate availability of the latest editions of the IMDG Codes EMS and MFAG Guides and / or local guidelines serving similar purposes (i.e. TremCards, STCC Code etc.). Maintenance and immediate availability of Material Safety Data Sheets (MSDS) if provided.
 - e) If deemed necessary, activation of emergency response contractors.
 - f) Notification to the Customer's nearest office.
 - g) File an incident report as required by applicable local regulations.
3. Training and Registrations: Training of Hazardous Material / Dangerous Goods Employees as per IMDG Code recommendations under Chapter 1.3

[END OF SECTION]

SECTION 4: CUSTOMER'S OBLIGATIONS

41. GENERAL OBLIGATIONS

In receiving the Terminal Services from the Operator, the Customer shall:

- (a) Act in compliance with the applicable Laws;
- (b) Act in a safe and efficient manner;
- (c) Promptly perform each task allocated to it in this Agreement; and
- (d) Act in accordance with any lawful and reasonable directions given from time to time by the Operator within the scope of this Agreement.

42. BERTHING

The Customer shall

- (a) comply with the Operator's Berthing Plan, Minimum Crane Density and exchange parameters as described in Section 3;
- (b) provide regular sailing schedules and notification of estimated time of Arrival;
- (c) manage and control the movement of Vessels and/or related Vessel equipment within the Port with all due care and skill such that the Vessels do not cause any damage to the Terminal or persons or property on or in the vicinity of the Terminal;
- (d) provide to the Operator the general arrangement plan of any Vessel and any other pertinent information in accordance with the requirements of this Section 4;
- (e) berth the Vessel so as to best aid maximum productivity of Cargo transfer. The Operator must specify the working berth most conducive to the efficient operation of the vessel and on which side the Vessel should be berthed. If the Vessel can be worked equally well from either side it shall be berthed so as to minimise tug costs for the Customer. If the Customer (via the Vessel's command) elects not to comply with the Operator's berthing request, the Operator reserves its rights to vary the Vessel's working program and Performance Standards;
- (f) vacate the Terminal at the agreed window time unless the Operator has delayed the completion of the Vessel's operations or unless otherwise mutually agreed; and
- (g) when possible give at least 3 months notice to the Operator of desired changes to the Berthing Window Plan. Changes to the Berthing Window Plan shall be agreed between the Operator and Customer prior to these changes coming into effect.

43. SHIP OPERATIONS

The Customer shall:

- (a) submit to the Operator not later than 24 hours before the Vessel arrives one (1) complete and accurate set of Cargo documentation as is necessary for the safe, orderly and efficient discharge/loading of that Vessel. Such documentation shall be in the format reasonably requested by the Operator and include, without limitation, manifests, bay plans, notifications and detailed descriptions of hazardous and reefer Cargos together with such other documents as the Operator may have notified duly in advance that it reasonably requires the Customer to provide;

- (b) ship bay plan, discharge, load and transshipment instructions twelve (12) hours before Arrival.
- (c) information about late gate arrivals and special stow requirements twelve (12) hours before the estimated time of Arrival.
- (d) arrange for the delivery of Containers or Cargo to the Terminal in accordance with the Cut-off procedures described in Section 2 and supply not later than twenty four (24) hours before the Vessel arrives, information sufficient to enable the Operator to provide the Terminal Services, including the validation of any export Containers to be loaded;
- (e) confirm to the Operator, not later than the time of receipt of Containers/Cargo by the Operator in its yard, the Customer's instructions in relation to the loading or otherwise of such Containers/Cargo (including a lashing plan);
- (f) ensure that all lashing gear (including (un)locking poles, stacking cones and twist-locks) conforms to international standards, is in good working order, is fitted in a consistent manner and is placed readily available in lashing bins adjacent to the area to be lashed/unlashed. Manual twist locks are to be handled by exception only and with prior agreement by the Operator; and
- (g) Comply with all reasonable written requests by the Operator to ensure a safe working environment including, but not limited to, installing necessary handrails and temporary fencing barriers without undue delay for all unprotected edges, particularly around outboard cells and open hatches.

44. INVOICING & PAYMENTS

The Customer shall confirm to the Operator within One (1) Business Day(s) after receipt by the Customer, the accuracy of actual ship working information provided by the Operator to the Customer for invoicing purposes. Absence of a response from the Customer will be deemed an acceptance of the information provided, and any dispute with respect to the information must be resolved by the relevant Parties within three (3) Business Days of first receipt.

[END OF DOCUMENT]